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98TH CONGRESS  
1ST SESSION

# S. 1355

To amend the Small Business Act to provide assistance to small business concerns in acquiring procurement information and contracts from the United States.

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## IN THE SENATE OF THE UNITED STATES

MAY 25 (legislative day, MAY 16), 1983

Mr. SPECTER (for himself, Mr. WEICKER, Mr. NUNN, Mr. DIXON, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Small Business

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## A BILL

To amend the Small Business Act to provide assistance to small business concerns in acquiring procurement information and contracts from the United States.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Small Business Procure-  
4       ment Reform Act of 1983".

5                          PURPOSES

6       SEC. 2. The purposes of this Act are—

7                          (1) to assure further that a fair proportion of Gov-  
8                          ernment procurement contracts are awarded to small

1 business concerns and to increase small business par-  
2 ticipation in procurement where possible;

3                   (2) to simplify the contracting procedures of the  
4                   United States which relate to small businesses;

9                         (4) to establish a Small Business Procurement Ad-  
10                         visory Committee to make legislative and administra-  
11                         tive recommendations concerning Government procure-  
12                         ment contracts for small business concerns and to pro-  
13                         vide better representation of small business concerns  
14                         before the Congress and the Small Business Adminis-  
15                         tration.

16 DEFINITIONS

17 SEC. 3. As used in sections 2, 6, and 7 of this Act—

18                   (1) the term "Administrator" means the Adminis-  
19                   trator of the Small Business Administration;

20                   (2) the term "Committee" means the Small Busi-  
21                 ness Procurement Advisory Committee established by  
22                 section 7;

23                   (3) the term "Federal agency" has the same  
24                   meaning given the term "agency" by section 551(1) of  
25                   title 5, United States Code; and

1                     (4) the term "Government procurement contract"  
2                     means a contract for the procurement of goods or serv-  
3                     ices by a Federal agency.

4                     MINIMUM NOTIFICATION STANDARDS

5                     SEC. 4. Section 8 of the Small Business Act (15 U.S.C.  
6 637) is amended—

7                     (1) by inserting "(1)" after "(e)" in subsection (e);  
8                     (2) by redesignating clauses (1) through (10) in  
9                     subsection (e)(1) as clauses (A) through (J), respective-  
10                   ly; and

11                   (3) by adding the following new paragraphs at the  
12                   end of subsection (e):

13                   "(2) If bidding on a procurement action subject to para-  
14                   graph (1) is limited to one person, a particular area of the  
15                   United States, or both, the Secretary of Commerce shall pro-  
16                   vide a written description of the individual circumstances and  
17                   the law or rule which is the basis for the limitation in the  
18                   notice required to be publicized under paragraph (1).

19                   "(3) The Secretary of Commerce shall publish timely  
20                   notice of all awards of Government procurement contracts  
21                   set aside for small business concerns under section 15.

22                   "(4) The Secretary of Commerce shall investigate and,  
23                   to the extent practicable, may implement alternative means  
24                   of notifying small business concerns of procurement actions

1 subject to paragraph (1), in addition to the daily publication  
2 required by paragraph (1).".

3           **BIDDING ON LARGE SYSTEMS PROCUREMENTS**

4        SEC. 5. Section 8 of the Small Business Act (15 U.S.C.  
5 637) is amended by adding the following new subsection at  
6 the end thereof:

7           "(f) During the procedure for planning contracts for the  
8 procurement of services or of spare parts for large systems,  
9 the head of each Federal agency shall take all steps so as not  
10 to preclude performance by small and small disadvantaged  
11 concerns as prime contractors, where practicable.".

12      **GOVERNMENT PROCUREMENT CONTRACT ARBITRATION**

13           **PANELS**

14        SEC. 6. The Administrator shall establish Government  
15 procurement contract arbitration panels in such number as  
16 the Administrator deems appropriate. A panel shall provide  
17 an opportunity for resolving a dispute between a small busi-  
18 ness concern and a Federal agency concerning a Government  
19 procurement contract which is or may be let to the concern.  
20 Use of a panel shall be voluntary. A decision of a panel shall  
21 be binding only to the extent that the concern and agency  
22 agree that the decision is binding.

23      **SMALL BUSINESS PROCUREMENT ADVISORY COMMITTEE**

24        SEC. 7. (a) There is established a Small Business Pro-  
25 curement Advisory Committee to be composed of thirteen

1 members appointed by the Administrator. The committee  
2 shall advise the Congress and the Administrator on matters  
3 relating to Government procurement contracts awarded to,  
4 or set aside for, small business concerns.

5       (b) A member of the committee shall, while away from  
6 the member's home or regular place of business in the per-  
7 formance of services for the committee, be allowed travel ex-  
8 penses, including a per diem allowance in lieu of subsistence,  
9 in the same amount as a person employed intermittently in  
10 the Government service is allowed expenses under section  
11 5703(b) of title 5, United States Code.

12       (c) At the close of each calendar year, the committee  
13 shall submit a report to the Congress and to the Administra-  
14 tor. The report shall describe the activities of the committee  
15 during the year and contain recommendations for new Feder-  
16 al legislation or agency rules which the committee deter-  
17 mines will increase the number of Government procurement  
18 contracts awarded to small business concerns.

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**H 3436****CONGRESSIONAL RECORD — HOUSE****June 1, 1983**

"(5) 'Director' means the Director of the Office of Management and Budget.

"(6) 'Administrator' means the Administrator of General Services;"; and

(2) by striking out the phrase "Director of the Office of Management and Budget" each time that it appears and inserting in lieu thereof "Director".

**SEC. 2.** Section 6102 of title 31, United States Code, is amended—

(1) by striking out "prepare and maintain information on domestic assistance programs" in subsection (a) and inserting in lieu thereof "collect and review information on domestic assistance programs and shall provide such information to the Administrator of General Services"; and

(2) by striking out the second sentence of subsection (b) and inserting in lieu thereof "The Director shall be responsible for ensuring that the Administrator incorporates all relevant information received on a regular basis.";

(3) by striking out "Director" in subsection (c) and inserting in lieu thereof "Administrator";

(4) by striking out "and" at the end of subsection (c)(1), by striking out the period at the end of subsection (c)(2) and inserting in lieu thereof "; and", and by adding thereafter the following new paragraph:

"(3) shall ensure that the information in the computerized system is made current on a regular basis and that the printed catalogue and supplements thereto contain the most current data available at the time of printing."

**SEC. 3.** Sections 6103 and 6104 of title 31, United States Code, are each amended by striking out "Director" each place it appears and inserting in lieu thereof "Administrator".

**SEC. 4.** Title 31, United States Code, is amended by striking out section 6105 and inserting in lieu thereof the following:

"**§ 6105. Oversight responsibility of Director**

"The Director shall have oversight responsibility for the exercise of all authorities and responsibilities in this chapter not specifically assigned to the Director.

"**§ 6106. Authorization of appropriations**

"After October 1, 1983, there may be appropriated to the Administrator such sums as may be necessary to carry out the responsibilities of this chapter."

**SEC. 5.** The analysis of chapter 61 of title 31, United States Code, is amended by striking out the item relating to section 6105 and inserting in lieu thereof the following:

"**6105. Oversight responsibility of Director.**

"**6106. Authorization of appropriations.**"

**SEC. 6.** The Director of the Office of Management and Budget shall transfer to the Administrator of General Services such personnel, property, records, and unexpended balances of appropriations available in connection with any authorities and responsibilities so transferred, as the Director of the Office of Management and Budget determines are necessary to carry out the responsibilities transferred pursuant to this Act.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas (Mr. BROOKS) will be recognized for 20 minutes, and the gentleman from New York (Mr. HORTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, H.R. 2592 transfers selected responsibilities for the printed Catalog of Federal Domestic Assistance and a related data base from the Director of the Office of Management and Budget to the Administrator of General Services. OMB requested authorization to transfer these responsibilities to GSA since GSA has experience in and greater resources for assembling and disseminating information. GSA agreed to assume the responsibilities, provided the personnel and resources were also transferred.

The Catalog of Federal Domestic Assistance is an annually printed volume that provides easily accessible, up-to-date information on the availability of funds from Federal domestic assistance programs for State and local governments and private individuals and groups. Identical information is maintained in a computerized data base. OMB has had responsibility for production of the catalog and maintenance of the computer data base since 1977.

H.R. 2592 provides for the transfer to GSA of the responsibilities for maintaining and updating the computerized data base and for preparing and disseminating the printed catalog. The bill provides, however, that OMB will retain responsibility for collecting the data on domestic assistance programs from the agencies and reviewing the information collected. In addition, OMB will retain overall responsibility for the quality of both the printed catalog and the computerized data base.

I believe these changes are reasonable and should be enacted. Therefore, I urge the House to pass H.R. 2592.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Mr. Speaker, I rise in support of H.R. 2592, a bill which simply transfers from one executive branch agency to another the responsibility for publishing the Catalog of Federal Domestic Assistance Programs.

This very useful publication has been issued by the Office of Management and Budget each year since 1967. State and local governments have found the catalog especially helpful in obtaining information about Federal assistance programs. Many other individuals have also saved considerable time and money by consulting this document. I am sure all Members realize, for example, how important the catalog is to the case workers in their offices.

OMB has recently suggested that the actual publication of this document could be performed more efficiently by the General Services Administration, which has more experience in and resources for assembling

and disseminating information. GSA has agreed to assume this responsibility.

Under the bill, OMB will still collect and review the data from the various agencies. It will also retain responsibility for the quality of the publication. Only the maintenance, compilation, and dissemination of the data are to be transferred to GSA.

Since both agencies involved have requested this legislation, and the bill makes no substantive change in the product required by Congress, I see no reason for objection. I urge an "aye" vote on this bill.

Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. BROOKS) that the House suspend the rules and pass the bill, H.R. 2592.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

**GENERAL LEAVE**

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

**OFFICE OF FEDERAL PROCUREMENT POLICY ACT AMENDMENTS**

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2293) to amend the Office of Federal Procurement Policy Act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2293

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SHORT TITLE; REFERENCES**

SECTION 1. (a) This Act may be cited as the "Office of Federal Procurement Policy Act Amendments of 1983".

(b) As used in this Act, the term "the Act" means the Office of Federal Procurement Policy Act.

**DECLARATION OF POLICY**

Sec. 2. Section 2 of the Act (41 U.S.C. 401) is amended to read as follows:

**"DECLARATION OF POLICY"**

"Sec. 2. It is the policy of the Congress that the Federal Government shall rely on competitive procurement practices to supply needed property and services, and that the system for procurement of property and services by the Federal Government shall—

"(1) promote full and open competition;  
"(2) establish policies, procedures, and practices which will provide the Govern-

June 1, 1983

## CONGRESSIONAL RECORD — HOUSE

H 3435

paid the fair market value for improvements on the vacated lands; the actual costs of relocation; and an amount which, when added to the reimbursement for improvements, would enable the family to secure a decent replacement dwelling. Funds originally authorized for these purposes, \$31,500,000, have also been depleted, largely because of the inflationary rise in the cost of housing. Section 2 of the bill extends the authority for these appropriations by \$15 million annually for fiscal years 1983 through 1987.

As I noted, Mr. Speaker, this legislation was submitted by the Commission as an administration proposal and I do not know of any opposition.

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Mr. Speaker, I reserve the balance of my time.

Mr. LUJAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this legislation. It is really a very simple bill. The gentleman from Arizona (Mr. UDALL) has very well outlined the provisions of the bill. The Congress set in motion by previous legislation certain things that should happen in resolving the Hopi-Navajo dispute, and now, of course, it takes money to carry out those provisions.

I was originally opposed to the original legislation, as a matter of fact, but we have some developments now that make it a lot easier to solve the problem. The chairman of the Hopis and the chairman of the Navajos are good friends and they are working toward getting this resolved amicably, and so I would support the legislation.

One other thing that is a little unique about this piece of legislation: Normally, when you are trying to solve a problem and you hear everybody agrees on how to solve it, usually it is the parties affected that agree as long as Uncle Sam picks up the tab. Well, in this case even Uncle Sam has agreed that we ought to pass this legislation, as we have administration support for it.

So, Mr. Speaker, I would urge my colleagues to support this legislation.

● Mr. NEAL. Mr. Speaker, the Stevens Center in Winston-Salem, N.C., is an innovative project that promises to provide desperately needed economic stimulus to downtown Winston-Salem. The owner of the center, the North Carolina School of the Arts, has renovated a historic hotel and theater complex in downtown Winston-Salem to provide the focus for a major revitalization of the area. With a \$3.14 million grant from the Economic Development Administration, a charter from the State of North Carolina, and \$7 million in private donations, the school produced an impressive centerpiece for further development in the city.

Unfortunately, Mr. Speaker just as the project is about to make a major contribution to the Winston-Salem economy, a problem has arisen that

could mean the loss of Federal and private dollars invested. A leasing arrangement proposed by the school of the arts to pay for operating and maintaining the center is considered illegal by EDA. Unless the Congress acts within the next few days, school officials will be forced to close the center to avoid repaying the EDA grant.

Mr. Speaker, although the State of North Carolina has generously agreed to contribute over \$120,000 annually for partial funding of the operation and maintenance of the center, these costs have risen substantially. Regrettably, the combination of State funding and ticket revenues is no longer sufficient to cover them. The problem can be solved by allowing a private investor to take responsibility for the center through a lease, while preserving it for its intended use by the school. This resolution would simply allow the school to enter the necessary leasing arrangement without endangering the EDA portion of the project.

The Stevens Center is located in the heart of downtown Winston-Salem in a building that had been abandoned, and was scheduled for demolition. When the school took on the project, it was understood that the EDA grant would function as only a part of the much greater financing package of Federal, State, and private investment designed to create jobs and promote business development in the downtown area.

Mr. Speaker, this expectation has proven true, and in addition to the \$7 million in private donations received to build the center itself, another \$10 million in private investment has been attracted for renovation of the adjoining properties. By making use of provisions contained in the Economic Recovery Tax Act of 1981, the school and the investors will secure both the needed center operating funds and the expected subsequent investment in the surrounding area.

The school proposes to enter a long-term leasing agreement with private investors, who will pay all operating and maintenance costs of the center, and permanently reserve it for the purposes specified in the EDA grant. Similar leases of such facilities have already occurred in a number of States, including a sale and long-term lease back of the Pantages Theater for the Performing Arts in Tacoma, Wash., and the Shea's Buffalo Theater and Kleinhans Music Hall in Buffalo, N.Y.

Under EDA regulations, this measure is required to allow the transfer of property partially funded by a Federal grant. When the school originally sought approval of the transfer last year, EDA refused to allow the transfer without legislative action.

Mr. Speaker, I understand that EDA is satisfied that the center would continue to be used for the purposes specified in the grant, and EDA officials agree that their regulations would

permit them to approve the transfer. The problem arises from general Office of Management and Budget regulations which EDA interprets as requiring repayment of the grant if the school entered into such a leasing arrangement.

It is a shame, Mr. Speaker, that we even need to be considering this legislation today. For over 4 months, the school of the arts, the State government, and the citizens of Winston-Salem have been concerned about the future of this important project, and they have watched as two identical theater projects have been approved. However, in the House, the regular EDA authorization is still in committee, and this is our first opportunity to provide this important legislation.

Mr. Speaker, this legislation requires no separate authorization, and it does no more than remove a technicality that is preventing an important public project to operate on a self-sustaining basis and contribute to the economic development which was originally intended by the grant. I urge my colleagues to support the resolution. ●

Mr. UDALL. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. NEAL). The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 1746.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

## CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAMS

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2592) to transfer from the Director of the Office of Management and Budget to the Administrator of General Services the responsibility for publication of the catalog of Federal domestic assistance programs, and for other purposes.

The Clerk read as follows:

H.R. 2592

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 61 of title 31, United States Code, is amended—*

(1) by adding at the end of section 6101 the following new paragraphs:

June 1, 1982

## CONGRESSIONAL RECORD — HOUSE

H 3437

ment property and services to the requisite quality, within the time needed, at the lowest reasonable cost;

"(3) promote the development of simplified uniform procurement processes;

"(4) promote the participation of small business concerns;

"(5) support the continuing development of a professionally competent work force;

"(6) eliminate fraud and waste in the procurement process;

"(7) eliminate duplication of procurement activities and redundant requirements placed on contractor and Federal procurement officials;

"(8) promote fair dealings and equitable relationships with the private sector;

"(9) ensure payment is made in a timely manner and only for value received;

"(10) require the description of needs, whenever feasible, in terms of functions to be performed or performance required;

"(11) require, to the extent practicable, the use of commercial products to meet the Government's needs;

"(12) ensure the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements;

"(13) require that personal services are obtained in accordance with applicable personnel procedures and not by contract; and

"(14) otherwise promote procurement efficiency, effectiveness, and economy within the Government and for those who do business with the government."

## AUTHORITY AND FUNCTIONS

SEC. 3. (a) Section 6(a) of the Act (41 U.S.C. 405(a)) is amended by striking out the matter preceding paragraph (1) and inserting in lieu thereof the following:

Sec. 6. (a) The Administrator shall provide overall direction of procurement policy. To the extent the Administrator considers appropriate and, with due regard to the program activities of the executive agencies, the Administrator shall prescribe policies, regulations, procedures, and forms which shall be in accordance with applicable laws and shall be followed by executive agencies—.

(b) Section 6(d) of the Act is amended—

(1) by striking out "developing" in paragraph (2) and inserting in lieu thereof "establishing"; and

(2) by striking out "for inclusion in the uniform procurement system to be submitted under section 8(a)," in paragraph (7).

(c) Section 6(e) of the Act is amended by striking out "the uniform procurement system" in the first sentence and inserting in lieu thereof "policies, regulations, procedures, and forms".

(d) Section 6 of the Act is further amended—

(1) by striking out subsections (h) and (i) and inserting in lieu thereof the following:

"(h) The Administrator may, with the concurrence of the Director of the Office of Management and Budget, deny or rescind the promulgation of any final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with policies set forth in paragraphs (1) through (14) of section 2 of this Act or is inconsistent with any policies, regulations, or procedures issued pursuant to subsection (a) of this section.";

(2) by redesignating subsection (j) as subsection (i).

## RESPONSIVENESS TO CONGRESS

SEC. 4. (a) Section 8 of the Act (41 U.S.C. 407) is amended—

(1) by striking out "(1)" in paragraph (1) of subsection (a) and by striking out paragraphs (2), (3), and (4) of such subsection;

(2) by striking out "any policy prescribed under section 6(h)" in subsection (b) and inserting in lieu thereof "any policy or regulation prescribed under section 6(a)";

(3) by inserting "or regulation" after "proposed policy" in the matter preceding paragraph (1) of subsection (b);

(4) by inserting "or regulation" after "policy" each place it appears in paragraphs (1), (2), and (3) of such subsection; and

(5) by striking out "any policy" in subsection (c) and inserting in lieu thereof "any policy or regulation".

## FEDERAL AGENCY RESPONSIBILITIES

Sec. 5. The Act is further amended by inserting after section 8 the following new section:

## FEDERAL AGENCY RESPONSIBILITIES

Sec. 8A. (a) To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall—

"(1) increase the use of full and open competition in agency procurements in accordance with subsection (b);

"(2) ensure that agency procurements are carried out in accordance with all laws, Government-wide policies and regulations, and good business practices;

"(3) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking, including placing the procurement function at a sufficiently high level in the agency to provide—

"(A) direct access to the head of the major organizational element served; and

"(B) comparative equality with organizational counterparts;

"(4) designate a senior procurement executive who shall be responsible for management direction of the procurement system, including unique agency policies and regulations and agency system standards, and who shall serve as the advocate for competition in accordance with subsection (c);

"(5) develop and maintain a procurement management career program to ensure an adequate professional work force;

"(6) establish and maintain procurement records in accordance with subsection (d); and

"(7) prepare and submit annual reports in accordance with subsection (e).

"(b) Efforts to increase the use of full and open competition pursuant to subsection (a)(1) shall include—

"(1) assigning to the senior procurement executive designated pursuant to subsection (a)(4) responsibility for removing barriers to full and open competition and for reporting to the agency head annually on new initiatives required to increase competition and on barriers to full and open competition which such executive was unable to remove;

"(2) setting goals and developing plans for increasing competition on a fiscal year basis;

"(3) using advance procurement planning, market research, business strategies, and testing of the marketplace for alternative products and services;

"(4) describing needs whenever possible in terms of functions to be performed or performance required;

"(5) precluding from Government solicitations qualification requirements, designs, processes, or other conditions which restrict competition and which do not serve legitimate purposes;

"(6) establishing more than one production source for new products, whenever feasible;

"(7) excluding the use of patents or proprietary rights as the grounds for using noncompetitive procedures when competitive alternatives exist;

"(8) limiting those circumstances for which noncompetitive procurement is per-

mitted and requiring written approval at a level above the contracting officer for such procurements;

"(9) publicizing notices of proposed procurement actions well in advance of the time for receipt of bids or proposals and specifically inviting competition unless non-competitive procurement has been justified and approved;

"(10) designing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

"(11) emphasizing competition in programs for procurement training and research.

"(c) The senior procurement executive designated as the advocate for competition under subsection (a)(4) shall be responsible for promoting full and open competition in the procurement of property and services and shall—

"(1) review the purchasing and contracting activities of the executive agency;

"(2) identify and report to the head of the executive agency—

"(A) opportunities to achieve full and open competition on the basis of price and other significant factors in the purchases and contracts of the executive agency;

"(B) solicitations and proposed solicitations which include unnecessarily detailed specifications or unnecessarily restrictive statements of need which may reduce competition in the procurement activities of the executive agency; and

"(C) any other condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency; and

"(3) prepare and transmit to the head of the executive agency an annual report describing such executive's activities under this section.

"(d)(1) Each head of an executive agency shall establish and maintain for a period of five years a record, by fiscal year, of all procurements other than small purchases (of less than an aggregate of \$25,000) in such fiscal year. Such record shall include—

"(A) information identifying the source to whom the contract was awarded;

"(B) the property or services obtained by the Government under the procurement; and

"(C) the total cost of the procurement.

"(2) With respect to any procurement in which noncompetitive procedures were used or in which only one bid or proposal was received after competitive procedures were used, the procurement record shall include, in addition to the information required by paragraph (1)—

"(A) the reason for the use of noncompetitive procedures; and

"(B) the position of the officers or employees of the agency who required and approved the use of noncompetitive procedures in such procurement.

"(3) The information included in the record established and maintained under this subsection shall be transmitted to the Federal Procurement Data Center referred to in section 6(d)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(5)).

"(e)(1) Not later than October 31 of each of 1984, 1985, and 1986, each head of an executive agency shall transmit to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives an annual report including the information specified in paragraph (2).

**H 3438****CONGRESSIONAL RECORD — HOUSE****June 1, 1983**

"(2) Each annual report transmitted under paragraph (1) shall include—

"(A) a summary of the activities and accomplishments of the senior procurement executive of the executive agency during the preceding fiscal year; and

"(B) a specific description of all actions that the head of the executive agency intends to take during the current fiscal year to—

"(i) increase competition for contracts with the executive agency on the basis of price and other significant factors; and

"(ii) reduce the number and dollar value of contracts entered into by the executive agency after soliciting bids or proposals from, or evaluating bids or proposals with discussions with, only one source.".

**EFFECT ON EXISTING REGULATIONS**

**SEC. 6.** Section 10 of the Act (41 U.S.C. 409) is amended to read as follows:

**"EFFECT ON EXISTING REGULATIONS**

"**SEC. 10.** Procurement policies, regulations, procedures, or forms in effect as of the date of enactment of this Act shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.".

**AUTHORIZATION OF APPROPRIATIONS**

**SEC. 7.** Section 11 of the Act (41 U.S.C. 410) is amended—

(1) by striking out "September 30, 1980" in the first sentence and inserting in lieu thereof "September 30, 1984"; and

(2) by striking out "three succeeding fiscal years" and inserting in lieu thereof "two succeeding fiscal years".

**DELEGATION**

**SEC. 8.** Section 12 of the Act (41 U.S.C. 411) is amended to read as follows:

**"DELEGATION**

"**SEC. 12.** (a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this Act (other than his basic authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out that policy), to any other executive agency with the consent of such agency or at the direction of the President.

"(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this Act.".

**PLAN TO TEST NEW PROCUREMENT METHODS AND PROCEDURES**

**SEC. 9.** The Administrator of the Office of Federal Procurement Policy shall develop and submit to the Congress, within one year after the date of enactment of this Act, a plan for testing innovative procurement methods and procedures in selected executive agencies. Such plan must be consistent with the policies set forth in section 2 of the Act. The Administrator shall include in the plan—

(1) a description of the need for and objectives to be achieved in the testing;

(2) a statement of the guidelines and procedures for the testing and the criteria to be used in measuring the success of such testing;

(3) an analysis of the potential costs and benefits which may be derived from such innovative procurement methods and procedures;

(4) a list of the appropriate executive agencies or agency components which will conduct such testing, which shall be limited in number;

(5) an identification of the categories and types of products or services to be included in such testing;

(6) a statement of the methods to be used to evaluate the results of the testing, including provisions to require the audit of such results by the Inspector General of each agency in which testing occurs, or in the case of those agencies not having an Inspector General, by the General Accounting Office; and

(7) an identification of any provisions contained in statutes or regulations that would prevent the conduct of such testing, unless amended or revised.

**PROCUREMENT PROCEDURES SIMPLIFICATION; CONFORMING AMENDMENTS**

**SEC. 10.** (a)(1) Section 302(c)(3) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(3)) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

(2) Sections 201(a)(1), 201(c), and 206(a)(4) of such Act (40 U.S.C. 481(a)(1), 481(c), 478(a)(4)) are each amended by striking out "subject to policy directives" and inserting in lieu thereof "subject to regulations".

(3) Section 602(c) of such Act (40 U.S.C. 474) is amended by inserting "except as otherwise provided by the Office of Federal Procurement Policy Act, and" after "any law inconsistent herewith".

(b) Section 3709 of the Revised Statutes (41 U.S.C. 5) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

(c) The Act of July 27, 1965 (41 U.S.C. 6a-1), is amended by striking out "\$10,000" in the third full unnumbered paragraph under the heading "Office of Architect of the Capitol" and inserting in lieu thereof "\$25,000".

(d) Section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n(b)(3)) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

(e)(1) Section 303(b) of the Act of July 2, 1980 (15 U.S.C. 631b(b)), is amended by striking out "\$10,000" each place it appears and inserting in lieu thereof "\$25,000".

(2) Section 8(d)(2)(A) of the Small Business Act (15 U.S.C. 637(d)(2)(A)) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

(3) Section 8(e) of such Act (15 U.S.C. 637(e)) is amended—

(A) by striking out "defense" in the first sentence thereof; and

(B) by striking out ". and all civilian procurement actions of \$5,000 and above".

(4) Section 15(j) of such Act (15 U.S.C. 644(j)) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

**EFFECTIVE DATE**

**SEC. 11.** The amendments made by this Act shall take effect on October 1, 1983.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas (Mr. BROOKS) will be recognized for 20 minutes, and the gentleman from New York (Mr. HORTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, I present for your consideration from the Committee on Government Operations, H.R. 2293, the Office of Federal Procurement Policy Act Amendments of 1983. This legislation reauthorizes the Office of Federal Procure-

ment Policy (OFPP) for another 3 years to continue its efforts in promoting Government-wide procurement reform.

The Committee on Government Operations believes that OFPP has served a worthwhile purpose in promoting efficiency and economy in the Federal procurement process. Over the years, it has aggressively pursued its mandate of: First, promoting full and open competition; second, reducing the extensive volume of agency regulations; and third, simplifying the Government's procurement process. However, considerably more work needs to be done to achieve the goals envisioned by the Commission on Government Procurement and the Congress. Given the increasing resistance by Federal agencies to OFPP's Government-wide reform efforts, it is clear that OFPP must be given additional time and authorities if the Office is to fulfill its important mandate.

**H.R. 2293** provides continued funding for OFPP for a 3-year period at its current authorization level of \$4 million per year. It also restores OFPP's authority to issue procurement policies and regulations.

The bill also gives OFPP, with the concurrence of OMB, the right to rescind inconsistent regulations of the agencies. This authority relates only to procurement activities of other agencies and does not affect the statutory authority of other agencies over social-economic laws implemented through the procurement process, such as the Secretary of Labor's authority with regard to remedial labor standards, including the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, and others.

Nothing in this bill should be construed as contradicting the opinion issued by the Attorney General on March 9, 1978, which reaffirmed the Secretary of Labor's authority in this area.

**H.R. 2293** also incorporates new sections on Government-wide policy and Federal agency procurement responsibilities. For example, the bill declares that it shall be the policy to use commercial products and functional specifications whenever feasible. Of course, there are some procurement activities, such as construction work, when functional specifications are not practical.

The bill also raises the ceiling for the use of small purchase procedures for civil agency contracts from \$10,000 to \$25,000. This provision would establish a common small purchase ceiling across the Government and result in savings because of shortened procurement cycles and reduced paperwork.

Additionally, the bill requires the head of each Federal agency to designate a senior procurement executive responsible for overseeing the agency's procurement system. It also establishes new criteria for agencies to follow in promoting full and open competition in their procurements. Fi-

June 1, 1983

## CONGRESSIONAL RECORD — HOUSE

H 3439

nally, the bill requires OFPP to develop a plan to test new and innovative procurement methods and to report its plan to Congress within 1 year.

In summary, the bill provides OFPP with the necessary funding and authority to insure the continuation of essential Governmentwide procurement reforms. I urge the House to support this bill.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Mr. Speaker, I rise in support of H.R. 2293, a bill to continue the Office of Federal Procurement Policy in the Office of Management and Budget for 3 more years.

As a member of the Commission on Government Procurement, which recommended establishment of this Office, and as a cosponsor of this bill and its two predecessors, which created and continued it, I have had a longstanding interest in the work of OFPP.

This Office is not very big, in either budget or personnel, but it performs an extremely important function in the central management of the Federal Government.

The Constitution vests the President with the "executive power" and directs him to "take care that the laws be faithfully executed." (Article II, sections 1, 3). The Supreme Court has ruled that—

The President may properly supervise and guide (executive officers') construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which . . . The Constitution evidently contemplated in vesting general executive power in the President alone. (*Myers v. U.S.*, 272 U.S. 52, 135 (1926)) H.R. 2293.

OFPP, as part of the "M," or management side, of OMB, is an important tool for assisting the President in securing unitary and uniform execution of laws in the area of procurement. This office—currently under the excellent direction of Don Sowle—has forced procurement officials in the various agencies to address problems of complexity, timeliness, cost effectiveness, and accountability. It has kept alive the possibility of real reform in the Federal procurement system.

My interest, and OFPP's, in this area is not just academic. If the procurement system can be simplified and made more uniform, Government agencies will have to spend less to administer it, and contractors will have to spend less to cope with it. That means savings to the taxpayers in two ways: Cheaper and better administration of the laws, and lower prices for items their Government buys. It also means that in the long run, products and services offered the Government may be still more numerous and cheaper, because more firms may well be willing to compete for Government business.

Mr. Speaker, H.R. 2293 represents a small investment for potentially great returns. I urge all Members to support this bill.

● Mr. McDADE. Mr. Speaker, I rise in support of H.R. 2293 to reauthorize the Office of Federal Procurement Policy. Since its creation in 1974, OFPP has played a vital role in improving the procurement process. It has served as a single contact point for the business community on procurement issues within the executive branch.

OFPP has served as a focal point for the development of procurement policy, and as the motivating force for development of the uniform Federal acquisition regulations (FAR), which should be issued this year. FAR will provide, for the first time, a uniform system of procurement regulations for all agencies, which will be supplemented only with essential additional agency provisions.

Reauthorization of OFPP and reinstatement of its regulatory authority is supported by the procurement community and the major business groups, including the U.S. Chamber of Commerce, Professional Services Council, Computer and Communications Industry Association, and the National Council of Technical Service Industries. Small businesses especially need a focal point for procurement policy. I am pleased to see that this legislation includes language requiring small business participation in the procurement process. I commend my colleagues Messrs. Brooks and HORTON for this notable change from previous OFPP legislation.

Government procurement has a major effect on the Nation's businesses, their employees, Government employees, and on a broader level, all American taxpayers. The policies ultimately adopted not only affect the expenditure of billions of dollars of taxpayers' money each year, but also will influence the Government's procurement practices for years to come. OFPP's reauthorization is necessary to provide an efficient and effective procurement system. ●

Mr. HORTON. Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. Brooks) that the House suspend the rules and pass the bill, H.R. 2293, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to

revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

□ 1220

## NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION AUTHORIZATION

Mr. ENGLISH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2196) to extend the authorization of appropriations of the National Historical Publications and Records Commission for 5 years.

The Clerk read as follows:

H.R. 2196

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2540(b) of title 44, United States Code is amended to read as follows:*

"(b) There is hereby authorized to be appropriated to the General Services Administration for each of the fiscal years ending on September 30 of 1984, 1985, 1986, 1987, and 1988, an amount not to exceed \$3,000,000 for the purposes specified in subsection (a). Each such appropriation shall be available until expended when so provided in appropriation Acts."

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Oklahoma (Mr. ENGLISH) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oklahoma (Mr. ENGLISH).

Mr. ENGLISH. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ENGLISH asked and was given permission to revise and extend his remarks.)

Mr. ENGLISH. Mr. Speaker, it was in 1934, the year our National Archives opened, that the Congress established a small advisory commission to promote the collection and publication of documents important to the understanding and appreciation of the history of the United States.

Although the National Historical Publications and Records Commission was created in 1934, it had no staff until 1950. And, it was not until 1964 that Federal grant funds were first authorized. The authorized level of funding reached its high point in 1974—\$4 million.

So, what we are seeking here today, is continuation of the grant program at a very reasonable level—25 percent below what was authorized almost 10 years ago. And, what we are seeking to reauthorize, is a program that has proven to be strikingly effective over the 19 years that Federal funds have been made available.

Thus far, the grants program of the National Historical Publication and Records Commission has funded projects totaling some \$65.5 million. Only

**H 3440****CONGRESSIONAL RECORD — HOUSE****June 1, 1983**

\$31 million was appropriated; the remaining \$34.5 million was from private sources—attracted by the Federal funds.

The projects and products supported by the NHPRC comprise too lengthy of a list for me to read here today. I can assure you, however, that funds have gone to virtually every State, and to projects pertaining to the records of one or another of almost everyone's favorite historical figures or topics.

One thing became very clear at my subcommittee's hearings on the NHPRC: termination of the Federal contribution, will also mean the end of nearly all private support; as a consequence, projects will go unfinished, and others, for lack of funds, will never be started.

Reauthorization will enable the NHPRC to continue its support of historical publications and records preservation across our Nation, and will insure the continued private support of the wide range of Commission-sponsored projects.

Mr. Speaker, recently we debated the fate of the west front of the Capitol. We heard talk of cost and space; but, the decision we made was to preserve for future generations, the nobility and grandeur of this building. It would be unfortunate, to say the least, if this, and other buildings deemed worthy of preservation were condemned to be hollow monuments, devoid of the very essence of our existence—the recorded history of what transpired in them.

Reauthorization of the National Historical Publications and Records Commission will insure through the preservation and publication of our rich documentary history, an enduring mark for future generations of just what kind of people we were and are.

I urge my colleagues to join me in supporting reauthorization of the National Historical Publications and Records Commission. To do otherwise would be tantamount to eating the seed corn.

Mr. Speaker, I reserve the balance of my time.

Mr. ENGLISH. Mr. Speaker, I yield myself such time as I may consume.

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Mr. Speaker, I rise to urge my colleagues to vote favorably on H.R. 2196, which would reauthorize the grant program of the National Historical Publications and Records Commission, joining our colleague, the gentleman from Oklahoma (Mr. ENGLISH) in this request to the House.

The NHPRC is a part of the National Archives and Records Service which is responsible for the preservation, repair and rehabilitation, duplication and reproduction, description, and exhibition of records or other documentary material deposited into the National Archives. I am now in my third Congress as ranking minority member

of the Government Information Subcommittee which has jurisdiction over the Archives. The subcommittee, under the leadership of its present chairman, the gentleman from Oklahoma and his predecessor, our former colleague from North Carolina, Richardson Preyer, has conducted regular oversight of the National Archives and we have been consistently concerned that the truly important historical records of our Nation may not survive in the environment in which they are kept and with the resources granted by the Congress for their preservation.

We have seen, however, that by facilitating the publishing of the papers of important Americans and American institutions (including the Congress), the NHPRC is fostering the preservation of these records. But, to say that is to get ahead of myself.

The scholars who have put together these editions that are on the table here today, we have one here, for example, the papers of George Catlett Marshall. General Marshall's papers, for example, even include photographs and pictures in that book, and it is easy for anyone to read. Others include the papers of George Washington and Thomas Jefferson and Ulysses Grant and other great figures of our Nation's history. But those who have put together these editions have searched for documents around the world to make sure that these collections are as complete as humanly possible. For example, in testimony received by the subcommittee in 1981, we learned that two letters written by Benjamin Franklin were located in the Karl Marx University in Dresden and that the Otoe Indians of Oklahoma possess a letter written to the tribe by Thomas Jefferson.

So, there is more to the job of preserving our Nation's history than building a warehouse in which to store just that which is in the custody of the U.S. Government.

In our oversight hearings, we have seen how the limited grant funds have been used over the years to preserve our history and have concluded that the funds have been used wisely by the Commission. Accordingly, we have again recommended to the Congress that the Commission be authorized to make such grants to continue the partnership of the Federal Government and private sources of funding which has been carrying on the work of preserving our Nation's history.

And, to those who have suggested that the private sector, foundations, universities, and the like, fund these projects in their entirety, I would say that that is as unrealistic as it is inappropriate. Certainly, it is with a bit of self-interest in mind that private foundations have told historians that it is the responsibility of the Government to assist in the preservation of its history. Nevertheless, I concur in that judgment. It is for the benefit of all our citizens that we preserve our history; it is one of the things that makes

us different from some other societies who attempt to erase the memory of previous leaders from the history taught to their children.

Mr. Speaker, I would ask whether the gentleman from Oklahoma has any requests for time on that side, and I reserve the balance of my time for the moment.

Mr. ENGLISH. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. BROOKS), the chairman of the Committee on Government Operations.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, I rise in support of H.R. 2196, which would reauthorize the National Historical Publications and Records Commission for the new 5 years at an authorization level of \$3 million annually. Congress established the NHPRC in 1934 to promote the collection and publication of the papers of important figures in American history. Until 1964, the Commission's principal role was one of encouraging governmental and private organizations in the collection and preservation of historical source materials. In that year, with the enactment of Public Law 88-383, which I sponsored, the Commission added the responsibility for compiling and preserving documentary source materials. That law authorized the first appropriations for grants to public and private groups for the preservation of historical documentary source material.

The NHPRC in its present form dates back to 1974 when Congress enacted Public Law 93-536, which I also sponsored. This law redesignated the Commission under its present title and amended the Commission's charter to bring it into preservation, as well as publication, of historical papers.

Mr. Speaker, the Commission has been involved in a large number of valuable publication projects and has assisted in the vital work of conserving and preserving historical documents ranging from municipal records to newspaper photo collections. The \$3 million authorization level set by H.R. 2196 should allow the NHPRC to fund the projects which it determines to be of highest national significance. I urge adoption of H.R. 2196.

□ 1230

Mr. KINDNESS. Mr. Speaker, I yield such time as he may consume to the ranking member of the Committee on Government Operations, the gentleman from New York (Mr. HORTON).

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Mr. Speaker, I rise in strong support of H.R. 2196, to reauthorize the grants program of the National Historical Publications and Records Commission.

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98TH CONGRESS  
1ST SESSION**S. 1001**

To authorize appropriations for the Office of Federal Procurement Policy for an additional five fiscal years.

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**IN THE SENATE OF THE UNITED STATES**

APRIL 7 (legislative day, APRIL 5), 1983

Mr. COHEN (for himself and Mr. ROTH) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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**A BILL**

To authorize appropriations for the Office of Federal Procurement Policy for an additional five fiscal years.

- 1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
- 2       That the first sentence of section 11 of the Office of Federal
- 3       Procurement Policy Act (41 U.S.C. 410) is amended by
- 4       striking out "three succeeding fiscal years" and inserting in
- 5       lieu thereof "eight succeeding fiscal years".

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S 4282

## CONGRESSIONAL RECORD — SENATE

April 7, 1983

mum penalty for each violation is \$100,000 and each day of a continuing violation is to be considered a separate offense. The amount of the penalty to be assessed is to be determined by the Secretary of Transportation, taking into account the nature, circumstances, extent, and gravity of the act committed, and with respect to the violator, the degree of culpability, history of prior offenses, and any other matter deemed appropriate. The latter half of Section 7 sets out the judicial review procedures available to the violator and the enforcement procedures to be used in collecting the penalty assessed.

**Section 8. Regulations.**—Section 8 authorizes the Secretary of Transportation to issue such regulations as may be necessary to carry out the provisions of the Act.

**Section 9. Effective Date.**—Section 9 establishes that the effective date is the date of enactment of the Act.

By Mr. COHEN (for himself and Mr. ROTH):

**S. 1001.** A bill to authorize appropriations for the Office of Federal Procurement Policy for an additional five fiscal years; to the Committee on Governmental Affairs.

OFFICE OF FEDERAL PROCUREMENT AUTHORIZATION ACT

● Mr. COHEN. Mr. President, today I am introducing legislation to reauthorize the Office of Federal Procurement Policy (OFPP) for an additional 5 years. The OFPP, which was established in 1974 to provide overall direction and leadership in Federal procurement policymaking, serves as the critical link between the Congress and the executive branch in the continuing effort to improve the Federal procurement process. This legislation, cosponsored by Senator ROTH, will maintain that link.

The Commission on Government Procurement recommended in its 1972 report to Congress that a central Office of Federal Procurement Policy was urgently needed. Effective management of the procurement process, according to the Commission, required a high degree of direction and control of basic policy. Prior to the creation of the OFPP, there was no central office in the executive branch prepared to provide the Congress with recommendations for improving the procurement process, and there was no arbiter to reconcile agency disagreements on procurement policy.

For these reasons, the Commission recommended that an OFPP—statutorily based with the directive, rather than advisory, authority—be established to fill this void. Congress implemented the Commission's recommendation in 1974 by creating the OFPP, high in competence and small in size, within the Office of Management and Budget to provide the direction needed in procurement policy. Within this authority, however, the OFPP is statutorily prohibited from interfering in the daily management of an agency's procurement operation, which properly is the responsibility of an agency's procurement officials.

As chairman of the Governmental Affairs Subcommittee on Oversight of

Government Management, I have had the opportunity to work with the OFPP on numerous contracting issues. In 1979 and 1980, the Oversight Subcommittee held a series of hearings on "hurry-up" spending in which we found that agencies rush to spend all their available funds at the end of the fiscal year for fear of not receiving full funding the next year. As followup, the Oversight Subcommittee worked with the Office of Federal Procurement Policy on a policy letter which required all Federal agencies to develop procurement agendas in advance of each fiscal year.

In 1981, the Oversight Subcommittee examined the adequacy of Federal debarment and suspension procedures, which are used to protect the Government from doing business with fraudulent or otherwise irresponsible contractors. The Oversight Subcommittee found problems, such as inaction by some agencies in debarring or suspending contractors known to be fraudulent as well as failure of many agencies to honor the debarments and suspensions of the initiating agency, and worked with the OFPP to develop new, Government-wide procedures. The improved standards for debarment and suspension were included in a June 1982 OFPP policy letter.

Most recently, the OFPP assisted the Oversight Subcommittee in drafting S. 338, the Competition in Contracting Act, which is designed to increase the use of competitive contracting and restrict noncompetitive—sole-source—contracting to only those circumstances when it is truly necessary. The OFPP was helpful in providing the needed expertise and technical assistance. Without the OFPP's help, it is unlikely that the Oversight Subcommittee's efforts would have been as effective.

The OFPP has exercised leadership in many other procurement activities, not the least of which is overseeing the implementation of the Executive Order 12352 of March 17, 1982, on Federal procurement reforms. The OFPP is responsible for providing leadership, policy guidance and coordination necessary to facilitate agency implementation. This procurement reform effort has been selected by the administration as one of the eight major initiatives which are being pursued under the "Reform 88" program to improve resource management. Other major OFPP projects include the continuing development of the Federal acquisition regulations and the revision of OMB circulars A-76 on contracting out and A-109 on major systems acquisition.

Any action on our part short of reauthorization would surely threaten the continuation of these projects and undermine the administration's procurement reform efforts. I recognize the value of a strong OFPP—Independent of any agency having procurement responsibility, empowered with directive rather than merely advisory

authority, responsive to Congress, and consisting of a small, highly competent cadre of seasoned procurement experts—and have joined with members of the contracting community, the American Bar Association, the chamber of commerce, and others, in supporting reauthorization.

While I believe that a central procurement policy office is still needed in the executive branch, with all the major attributes envisioned by the Commission, there is some question as to what specific authority the OFPP should have, what functions it should serve, and where it should be located. The Oversight of Government Management Subcommittee has scheduled a hearing on the reauthorization of the OFPP to consider these and other issues on April 27. The legislation I have introduced today along with Senator ROTH represents the committee's starting point on reauthorization and will serve as the basis for discussion during the hearing.●

By Mr. TSONGAS:

**S. 1002.** A bill to authorize interstate banking among the New England States and to require a report to the Congress concerning the use of the authority conferred by this act; to the Committee on Banking, Housing, and Urban Affairs.

NEW ENGLAND INTERSTATE BANKING ACT OF 1983

● Mr. TSONGAS. Mr. President, today I am introducing the New England Interstate Banking Act of 1983. Companion legislation is being introduced in the House by my colleague from Massachusetts, BARNEY FRANK, a member of the House Committee on Banking, Finance and Urban Affairs.

In December of last year, the Commonwealth of Massachusetts enacted legislation authorizing interstate banking between Massachusetts and other New England States which choose to enact similar reciprocal legislation. In passing this legislation, Massachusetts became the second State in New England, joining the State of Maine, to permit interstate banking operations in a reciprocal bases. The legislatures of other New England States are currently considering similar proposals.

The purpose of this legislation is to place a Federal imprimatur on New England interstate banking laws. It makes changes in Federal law to acknowledge such changes in State law, and directs Federal regulators to give effect to these State laws in considering applications for interstate branching, merging, or acquisitions within New England.

These changes in State law by New England legislatures have been occasioned by rapid changes in the financial services industry. New communications capabilities and marketing arrangements have produced a variety of financial services which are now offered on a national basis. These in-

April 7, 1983

## CONGRESSIONAL RECORD — SENATE

S 4281

to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code (5 U.S.C. 706(2)).

(c) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

## REGULATIONS

Sec. 8. The Secretary of Transportation may issue such regulations as are necessary to carry out this Act.

## EFFECTIVE DATE

Sec. 9. This Act shall become effective upon enactment.

## COMPETITIVE SHIPPING AND SHIPBUILDING ACT OF 1983.

## SECTION-BY-SECTION ANALYSIS

Section 1. This section states that the Act may be cited as the "Competitive Shipping and Shipbuilding Act of 1983".

Section 2. Findings, Purposes, and Policy.—In section 2(a) the Congress finds and declares that: the United States is dependent upon foreign-flag bulk shipping services; U.S.-flag vessels now carry less than four percent of its bulk import and export commodities; virtually all bulk imports are critical to American industrial production or maintenance of energy supplies; bulk exports contribute substantially to the U.S. balance of trade, provide major sources of employment, and contribute to the food supply on a worldwide basis; the United States cannot rely upon foreign sources to provide transportation services in times of national emergency; and, the United States is continuing to lose the major portion of revenues generated by the carriage of its bulk imports and exports in international trade.

In Section 2(b) the Congress declares that the purposes and policy of the Act are to: take immediate and positive steps so as to transport at least 20 percent of U.S. bulk imports and exports in U.S.-flag ships within 15 years; make it possible for importers and exporters to be able to ship their goods in U.S.-flag ships in a commercially practicable manner; and, encourage the construction of bulk cargo carrying merchant vessels in U.S. shipyards.

Section 3. Definitions.—Section 3(a) defines "United States-flag ship" as a bulk cargo carrying ship having U.S. citizen crews and built in, and documented under, the laws of the United States. In addition, no more than 50 percent of the total materials and components of the vessel can be attributed to foreign manufacture.

Section 3(b) defines the term "bulk cargo" as cargo transported in bulk without mark or count by a vessel engaged in the foreign commerce of the United States.

Section 3(c) defines "Secretary" as used throughout the Act to mean the Secretary of Transportation.

Section 4. Carriage of Bulk Cargoes on United States-flag Ships.—Section 4(a) requires that in the calendar year following the year of enactment of this Act, at least five percent of all bulk cargoes moved by water and imported to or exported from the United States must be carried on U.S.-flag ships. In each calendar year following, an additional one percent of the bulk cargoes are to be shipped in U.S.-flag vessels until a minimum of 20 percent is reached. Thus, in

15 years at least 20 percent of all U.S. bulk imports and exports will be transported on U.S.-flag ships.

Section 4(b) places the obligation of complying with the requirements of the Act on the importer and exporter of bulk cargoes. In addition, this section makes it clear that an importer or exporter cannot avoid the requirements of the Act by altering the terms of sale of the bulk cargoes.

Section 4(c) specifies that any importer or exporter who is subject to this Act, shall be granted credit on a ton for ton basis, for employing the use of U.S.-flag ships in the transportation of bulk cargoes between foreign ports.

Section 4(d) is a waiver provision whereby the Secretary of Transportation may relieve any importer, exporter, shipper, or receiver, from the requirements of the Act when it is determined that United States-flag ships are not available or are not available within guideline rates as set forth in Section 5. In determining the extent of any relief to be granted, the Secretary is required to take into consideration the timeliness of the waiver application, the number of vessels on order, under construction, coming off-hire and any other factors he deems relevant. However, no relief can be granted for a period beyond the calendar year in which the application is made. In addition, no relief will be granted where the Secretary determines that cargo is being diverted to avoid compliance with the Act.

Section 4(e) makes it clear that when bulk cargoes are expressed as a percentage, that percentage shall be measured by adding the tonnage of all bulk cargoes shipped by each importer or exporter in the foreign commerce of the United States. In other words, in determining whether an importer or exporter has carried the required percentage of cargo on U.S.-flag ships in any given year, the Secretary of Transportation shall look at the total tonnage of all bulk cargoes shipped by that importer or exporter in that year.

Section 5. Establishment of Guideline Rates.—Section 5(a) requires the Secretary of Transportation to publish guideline rates for the carriage of bulk cargoes on U.S.-flag ships. In establishing the guideline rates, the Secretary must assure that the rate takes into account the following objectives:

(1) the development and maintenance of a modern, efficient United States flag bulk cargo fleet;

(2) the availability of such a fleet to meet U.S. strategic requirements in time of international crisis;

(3) the maintenance of international markets for United States bulk exports and development of new market opportunities; and

(4) the continued access by American industry to essential bulk imports.

Section 5(b) requires the Secretary in establishing the guideline rates, to estimate the current cost, including reasonable profit, of operating various classes of United States-flag ships in the foreign bulk trades of the United States and the current cost, including reasonable profit, of constructing various classes of United States-flag ships in U.S. shipyards. These cost estimates must be established within six months after the Act is signed into law. These estimated costs must be revised annually in order to reflect the current year's inflation rate and such other factors as the Secretary deems appropriate.

Two years after the commencement of the required percentage of cargo to be transported on U.S.-flag ships becomes effective, the cost of operating a United States-flag vessel in the foreign commerce of the United States and the cost of constructing a bulk cargo carrying vessel in a U.S. shipyard

must be at least 15 percent below the Secretary's initial cost estimates. These cost estimates, as adjusted for inflation each year, will then be used as the primary basis for establishing the guideline rates.

Section 5(c) requires that the guideline rates be established individually to reflect the specific type of cargo movement (for example, the type of vessel, commodity and voyage). These guideline rates will be based upon internationally accepted charter market rate quotations (for example, London Brokers Panel) which will be adjusted upward or downward to reflect the Secretary's estimated costs, as outlined in Section 5(b). If an international market rate quotation is unavailable for a specific type of cargo movement, the Secretary is directed to utilize the best available information in determining an appropriate rate.

The Secretary must issue regulations, which explain the particular quotations or other information he will rely upon, and the methodology and criteria he will use in adjusting the charter market rates. The Secretary must review and adjust the guideline rates on at least an annual basis. Any adjustments to these rates may not reflect costs greater than the adjusted costs set forth in Section 5(b). These guideline rates shall be the maximum rates that a U.S.-flag ship operator may charge for the transportation of bulk cargoes subject to the Act.

Section 5(d) states that in the first calendar year following enactment of this Act, the Secretary, in consultation with the advisory committee established in Section 5(e), shall establish and publish interim guideline rates. These interim rates shall be based upon a fair and reasonable rate for the transportation of bulk cargoes on existing United States-flag bulk cargo carrying vessels. These interim rates shall be separately established for specific charters, voyages, bulk commodities and trades concerned, taking into account the objectives of this Act, and any other factors the Secretary deems appropriate. These interim rates shall be the maximum rates which may be charged for the charter of United States-flag ships until guideline rates have been established and published pursuant to Section 5(b) and (c).

Section 5(e) requires the Secretary of Transportation to appoint and consult with an advisory committee to advise and assist him in the establishment and review of United States-flag ship operating and construction costs, guideline rates and regulations. The advisory panel shall be composed of importers, exporters, charter brokers, United States-flag ship operators, shipbuilders, labor unions, and management and labor organizations.

Section 6. Reporting of Amount Shipped on United States-flag Ships.—Section 6(a) sets forth the reporting requirements for determining whether or not the importer or exporter has met the required percentage of trade reserved for U.S.-flag ships. The provisions and reporting requirements of the Act are applicable to any U.S. business entity that imports or exports bulk cargoes in the foreign commerce of the United States, and whose volume of business exceeds \$1 million annually.

Section 6(b) requires that any importer, exporter, shipper, or receiver, who fails to carry his required percentage of cargo on U.S.-flag ships, shall, in the next year, use exclusively U.S.-flag ships to carry all shipments until he has recouped the deficiency from the preceding year.

Section 7. Civil Penalty Provision.—Section 7 specifies the Civil penalty to be imposed on any importer or exporter who violates any provision of the Act. The maxi-

(b)(3)  
(b)(5)

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5 APR 1983

I

98TH CONGRESS  
1ST SESSION

# H. R. 2293

To amend the Office of Federal Procurement Policy Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1983

Mr. BROOKS (for himself and Mr. HORTON) introduced the following bill; which was referred to the Committee on Government Operations

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## A BILL

To amend the Office of Federal Procurement Policy Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3                   **SHORT TITLE; REFERENCES**

4        SECTION 1. (a) This Act may be cited as the "Office of  
5        Federal Procurement Policy Act Amendments of 1983".

6        (b) As used in this Act, the term "the Act" means the  
7        Office of Federal Procurement Policy Act.

8                   **DECLARATION OF POLICY**

9        SEC. 2. Section 2 of the Act (41 U.S.C. 401) is  
10      amended to read as follows:

1                   **"DECLARATION OF POLICY**

2        "SEC. 2. It is the policy of the Congress that the Feder-  
3 al Government shall rely on competitive procurement prac-  
4 tices to supply needed property and services, and that the  
5 system for procurement of property and services by the Fed-  
6 eral Government shall—

7                "(1) promote full and open competition;

8                "(2) establish policies, procedures, and practices  
9 which will provide the Government property and serv-  
10 ices of the requisite quality, within the time needed, at  
11 the lowest reasonable cost;

12               "(3) promote the development of simplified uni-  
13 form procurement processes;

14               "(4) promote the participation of small business  
15 concerns;

16               "(5) support the continuing development of a pro-  
17 fessionally competent work force;

18               "(6) eliminate fraud and waste in the procurement  
19 process;

20               "(7) eliminate duplication of procurement activi-  
21 ties and redundant requirements placed on contractor  
22 and Federal procurement officials;

23               "(8) promote fair dealings and equitable relation-  
24 ships with the private sector;

1                 “(9) ensure payment is made in a timely manner  
2                 and only for value received;

3                 “(10) require the description of needs, whenever  
4                 feasible, in terms of functions to be performed or per-  
5                 formance required;

6                 “(11) require, to the extent practicable, the use of  
7                 commercial products to meet the Government's needs;

8                 “(12) ensure the development of procurement poli-  
9                 cies that will accommodate emergencies and wartime  
10                 as well as peacetime requirements;

11                 “(13) require that personal services are obtained  
12                 in accordance with applicable personnel procedures and  
13                 not by contract; and

14                 “(14) otherwise promote procurement efficiency,  
15                 effectiveness, and economy within the Government and  
16                 for those who do business with the Government.”.

17                 **AUTHORITY AND FUNCTIONS**

18                 SEC. 3. (a) [REDACTED] (44-3000-1050), is  
19                 [REDACTED] preceding paragraph (1)  
20                 [REDACTED]

21                 “SEC. 6. (a) The Administrator shall provide overall di-  
22                 rection of procurement policy. To the extent the Administra-  
23                 tor considers appropriate and, with due regard to the pro-  
24                 gram activities of the executive agencies, the Administrator  
25                 shall prescribe policies, regulations, procedures, and forms

1 which shall be in accordance with applicable laws and shall  
2 be followed by executive agencies—".

3 (b) Section 6(d) of the Act is amended—

4 (1) by striking out "developing" in paragraph

5 (2) and inserting in lieu thereof "establishing";

6 and

7 (2) by striking out "for inclusion in the uni-  
8 form procurement system to be submitted under  
9 section 8(a)," in paragraph (7).

10 (c) Section 6(e) of the Act is amended by striking out  
11 "the uniform procurement system" in the first sentence and  
12 inserting in lieu thereof "policies, regulations, procedures,  
13 and forms".

14 (d) Section 6 of the Act is further amended—

15 (1) by striking out subsections (h) and (i) and in-  
16 serting in lieu thereof the following:

17 "(i). The Administrator may, with the concurrence of  
18 the Director of the Office of Management and Budget, deny  
19 or rescind the promulgation of any final rule or regulation of  
20 any executive agency relating to procurement if the Director  
21 determines that such rule or regulation is inconsistent with  
22 policies set forth in paragraphs (1) through (14) of section 2  
23 of this Act or is inconsistent with any policies, regulations, or  
24 procedures issued pursuant to subsection (a) of this section.";

1                   (2) by redesignating subsection (j) as subsection  
2                   (i).

3                   **RESPONSIVENESS TO CONGRESS**

4                   SEC. 4. (a) Section 8 of the Act (41 U.S.C. 407) is  
5 amended—

6                   (1) by striking out “(1)” in paragraph (1) of sub-  
7                   section (a) and by striking out paragraphs (2), (3), and  
8                   (4) of such subsection;

9                   (2) by striking out “any policy prescribed under  
10                  section 6(h)” in subsection (b) and inserting in lieu  
11                  thereof “any major policy or regulation prescribed  
12                  under section 6(a)”;

13                  (3) by inserting “or regulation” after “proposed  
14                  policy” in the matter preceding paragraph (1) of sub-  
15                  section (b);

16                  (4) by inserting “or regulation” after “policy”  
17                  each place it appears in paragraphs (1), (2), and (3) of  
18                  such subsection; and

19                  (5) by striking out “any policy” in subsection (c)  
20                  and inserting in lieu thereof “any major policy or  
21                  regulation”.

22                  **FEDERAL AGENCY RESPONSIBILITIES**

23                  SEC. 5. The Act is further amended by inserting after  
24                  section 8 the following new section:

1                   **"FEDERAL AGENCY RESPONSIBILITIES**

2        "SEC. 8A. To further achieve effective, efficient, and  
3    economic administration of the Federal procurement system,  
4    the head of each executive agency shall—

5                  "(1) develop plans to increase the use of full and  
6    open competition in agency procurements;

7                  "(2) ensure that agency procurements are carried  
8    out in accordance with all laws, Governmentwide poli-  
9    cies and regulations, and good business practices;

10                 "(3) establish clear lines of authority, accountabil-  
11    ity, and responsibility for procurement decisionmaking,  
12    including placing the procurement function at a suffi-  
13    ciently high level in the agency to provide—

14                 "(A) direct access to the head of the major  
15    organizational element served; and

16                 "(B) comparative equality with organiza-  
17    tional counterparts;

18                 "(4) designate an agency official or officials who  
19    shall be responsible for management direction of the  
20    procurement system, including unique agency policies  
21    and regulations and agency system standards;

22                 "(5) develop and maintain a procurement manage-  
23    ment career program to ensure an adequate profes-  
24    sional work force.".

1                   **EFFECT ON EXISTING REGULATIONS**

2        SEC. 6. Section 10 of the Act (41 U.S.C. 409) is  
3 amended to read as follows:

4                   **"EFFECT ON EXISTING REGULATIONS**

5        "SEC. 10. Procurement policies, regulations, proce-  
6 dures, or forms in effect as of the date of enactment of this  
7 Act shall continue in effect, as modified from time to time,  
8 until repealed, amended, or superseded by policies, regula-  
9 tions, procedures, or forms promulgated by the Administra-  
10 tor."

11                  **AUTHORIZATION OF APPROPRIATIONS**

12        SEC. 7. Section 11 of the Act (41 U.S.C. 410) is  
13 amended—

14                  (1) by striking out "September 30, 1980" in the  
15 first sentence and inserting in lieu thereof "September  
16 30, 1984"; and

17                  (2) by striking out "three succeeding fiscal years"  
18 and inserting in lieu thereof "two succeeding fiscal  
19 years".

20                  **DELEGATION**

21        SEC. 8. Section 12 of the Act (41 U.S.C. 411) is  
22 amended to read as follows:

23                  **"DELEGATION**

24        "SEC. 12. (a) The Administrator may delegate, and au-  
25 thorize successive redelegations of, any authority, function,

1 or power under this Act (other than his basic authority to  
2 provide overall direction of Federal procurement policy and  
3 to prescribe policies and regulations to carry out that policy),  
4 to any other executive agency with the consent of such  
5 agency or at the direction of the President.

6       “(b) The Administrator may make and authorize such  
7 delegations within the Office as he determines to be neces-  
8 sary to carry out the provisions of this Act.”.

10 SEC. 9. The amendments made by this Act shall take  
11 effect on October 1, 1983.



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98TH CONGRESS }      HOUSE OF REPRESENTATIVES      {  
  *1st Session*      REPORT  
                        { No. 98-146

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OFFICE OF FEDERAL PROCUREMENT POLICY ACT  
AMENDMENTS

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MAY 16, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BROOKS, from the Committee on Government Operations,  
submitted the following

R E P O R T

[To accompany H.R. 2293]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 2293) to amend the Office of Federal Procurement Policy Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

SUMMARY AND PURPOSE

H.R. 2293 authorizes continued funding for the Office of Federal Procurement Policy (OFPP) for a three-year period, effective October 1, 1983. Following the recommendations of the Commission on Government Procurement, Congress established OFPP as an independent operation of the Office of Management and Budget (OMB) by the enactment of P.L. 93-400 in 1974. It was evident to both the Congress and the Commission that a central, high-level office was needed to provide direction and leadership in the reform of the government's procurement system.

The Committee believes that OFPP has served a worthwhile purpose in promoting efficiency and economy in the Federal procurement process. Over the years, it has aggressively pursued its mandate of (1) promoting full and open competition, (2) reducing the extensive volume of agency regulations, and (3) simplifying the government's procurement process. While OFPP has gotten side-

tracked from its basic mission on occasion, its overall performance has been satisfactory and in the best interests of the government as a whole. However, considerably more work needs to be done to achieve the goals envisioned by the Procurement Commission and the Congress. Given the increasing resistance by Federal agencies to OFPP's reform efforts, it is clear that OFPP must be given additional time and authorities if the Office is to fulfill its important mandate.

H.R. 2293 achieves these objectives by reauthorizing OFPP for a three-year period at its 1980 authorization level of \$4 million per year and restores OFPP's authority to issue procurement policies and regulations, which had been removed in OFPP's 1979 Authorization Act (P.L. 96-83). The bill also incorporates new sections on government-wide policy and Federal agency procurement responsibilities and removes the requirement that OFPP develop a proposal for a uniform procurement system since this task has already been completed. Further, it requires the Administrator of OFPP to submit to Congress, within one year after the date of enactment, a plan for testing innovative procurement methods and procedures in selected executive agencies.

In addition, H.R. 2293 raises the ceiling for the use of small purchase procedures for civil agency contracts from \$10,000 to \$25,000. This provision would establish a common small purchase ceiling across the government and result in savings because of shortened procurement cycles and reduced paperwork.

Finally, the bill requires the head of each Federal agency to designate a senior procurement executive responsible for overseeing the agency's procurement system. It also establishes new criteria for agencies to follow in promoting full and open competition in their procurements.

#### COMMITTEE ACTION AND VOTE

H.R. 2293 was introduced by Chairman Jack Brooks and Congressman Frank Horton. The Committee on Government Operations ordered the bill reported with an amendment on May 3, 1983, by a unanimous voice vote with a quorum present.

#### HEARINGS

Hearings on H.R. 2293 were held by the Subcommittee on Legislation and National Security on April 7, 1983. Testimony was received from representatives of the General Accounting Office, the Office of Management and Budget, the General Services Administration, the Computer and Communications Industry Association, the U.S. Chamber of Commerce, the National Council of Technical Service Industries, the National Academy of Public Administration, the American Bar Association, and the Professional Services Council.

#### EXPLANATION OF AMENDMENT

Inasmuch as all after the enacting clause of H.R. 2293 was stricken and all language incorporated into one amendment, this report constitutes an explanation of the amendment.

## DISCUSSION

### BACKGROUND

In the late 1960's, the Government Operations Committee conducted extensive hearings on Federal procurement. These hearings revealed that (1) the procurement process is overly complex, (2) patchwork solutions to procurement problems will no longer suffice, (3) government procurement is important economically and politically in both its methods and goals, and (4) Congress and the public are deeply concerned about the effectiveness of procurement and the manner in which it is conducted. As a result, the Commission on Government Procurement was created by Public Law 91-129 in November 1969 to study and to recommend to Congress methods "to promote the economy, efficiency, and effectiveness" of procurement by the executive branch of the Federal Government.

After more than two years of study, the Commission made 149 recommendations to improve Federal procurement which, if implemented, would maximize competition, obtain reasonable prices and assure accountability of public officials for agency transactions. The Commission's first recommendation was the creation of a strong central office within the executive branch to provide leadership and direction over Federal procurement activities and to ensure that the procurement reforms recommended by the Commission are carried out on a government-wide basis. The Commission believed that it was essential to address the total procurement process and enumerated several components which were needed for a successful operation. These included: (1) An integrated statutory basis for procurement, implemented by a government-wide regulatory system, to establish sound policies and simplified agency procedures to direct and control the procurement process, (2) A coordinated government-wide contract administration and audit system to avoid duplication and deal uniformly with the private sector in the administration of contracts, and (3) A continuing government-wide program to develop better statistical information and improved means of procuring goods and services.

Following the recommendations of the Commission, the Office of Federal Procurement Policy (OFPP) was created within OMB by Public Law 93-400 on August 30, 1974. The purpose of this Act in establishing the OFPP was to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies. Almost without exception, those testifying during the hearings leading to the enactment of Public Law 93-400 agreed that some form of central institution with a government-wide perspective was needed to arrest proliferation of procurement statutes.

The Office of Federal Procurement Policy Act Amendments of 1979, Public Law 96-83, directed OFPP to develop a comprehensive, government-wide uniform procurement system. The Government Operations Committee report relating to Public Law 96-83 stated that the Committee expected OFPP to devote its attention to the development of a comprehensive and innovative system that incorporates all elements and stages of the total acquisition process. The central theme of the Uniform Procurement System (UPS) is to acquire property and services of the requisite quality and within the

time needed at the lowest reasonable cost, utilizing competitive procurement methods. Given the enormity of this task, Congress removed OFPP's regulatory authority over agency procurement practices to ensure that the Office devoted its full resources to this important undertaking.

**DEVELOPMENT OF THE UNIFORM PROCUREMENT SYSTEM (UPS)**

Congress has long recognized the desirability of establishing a government-wide uniform procurement policy for all Federal agencies. A uniform policy benefits both purchasers and vendors. Uniform procurement practices provide economies and efficiencies for the government and allow more vendors, particularly small businesses, to enter the Federal marketplace. Government-wide policies also avoid duplication and paperwork, thereby reducing the waste of public funds and delays in procuring needed supplies and services.

Despite the desirability of uniformity, over the years individual agencies have been allowed to develop unique procurement regulations and practices. This has resulted in the creation of an enormous body of diverse laws, policies, and regulations that cripple the government's effectiveness and inhibit competition. The present procurement system is complicated and confusing. In fact, the policies and practices of the procuring agencies are so diverse that contractors seem to be dealing with different governments. Uncoordinated and unconstrained, agencies' procurement practices have resulted in the proliferation and fragmentation of forms, functions, policies, and procedures that are overwhelming. The problem is further exacerbated by the existence of an underdeveloped professional workforce and the absence of individual accountability for producing results.

In response to the requirements of P.L. 96-83, OFPP submitted to the Congress in October 1980 a proposal for the Uniform Procurement System (UPS) to reform the government's procurement process. The new UPS was to be designed to be responsive to agency mission needs and rely on (1) the initiative and judgment of qualified people who are accountable for their performance, (2) competition as the predominant means of getting the most value from Federal expenditures, and (3) the greatest possible simplicity in procurement operations so that all of American business—small, large, or minority alike—can participate fully. Mechanisms would exist to correct mismanagement, to improve operation of the system, and to settle disputes between the government and its contractors in an expeditious and fair manner.

Such a system would also minimize the procurement regulatory and paperwork burden imposed on both the agencies and contractors. However, in order to help ensure efficient and effective procurement actions and accountability for results, penalties for improper conduct would be established.

UPS was expected to meet specific objectives which, if implemented, would resolve the outstanding problems identified over many years by the procurement Commission and the Congress. These objectives included:

A strong competitive climate should be established through encouraging maximum participation by industry. Further, needs would be defined so as to allow firms the opportunity to submit their most innovative, low cost solutions.

The Federal Government would present one face to private business through a single Federal policy-oriented statute which would implement the procurement system. The system would require uniformity on basic steps in procurement and guidelines within distinctly different types of procurement "subsystems".

The procurement system would contain central forums to provide quick and responsive pre- and post-contractual remedies which balance the interest of taxpayers and private firms.

P.L. 96-83 also required that OFPP develop a legislative proposal to implement the Uniform Procurement System (UPS) no later than October 1981. This proposal was to contain a clear delineation of responsibilities and authorities between OFPP, GSA, and the operating agencies for implementing UPS. It was also expected that the Office would maintain its central management oversight role over Federal procurement activities.

Unfortunately, OFPP failed to meet its statutory deadline and did not deliver its legislative proposal until February 1982. Further, this proposal contained major structural flaws and failed to meet the objectives established by OFPP's 1980 proposal for a Uniform Procurement System. The most serious deficiency was OFPP's recommendation for "dual conforming statutes"—one procurement system for DOD and one for the rest of the government. This provision clearly violates Congressional direction for OFPP to develop a single government-wide statute. Apparently, this was an attempt on the part of OFPP to accommodate DOD's desire to have its own separate procurement system apart from the rest of the government. The point that OFPP missed was that weakening the procurement proposal would not satisfy DOD. It should have been clear to OFPP that DOD had no intention of being a constructive part of the government-wide procurement reform effort.

Other major flaws with the proposal included the relaxation of the government's policy on the use of competition and the failure to include mechanism to provide quick and responsive remedies to pre- and post-contractual disputes between the government and its contractors. The responsibility for the deficiencies contained in the legislative proposal does not rest solely with OFPP. In fact, given the growing resistance by Federal agencies to OFPP's procurement reform activities, it is a wonder that OFPP managed to submit any proposal to Congress.

#### AGENCY RESISTANCE TO GOVERNMENTWIDE PROCUREMENT REFORM

The volume of Federal procurement has nearly tripled over the last ten years from \$58 billion in 1972 to \$159 billion in 1982. Despite this huge expenditure of money, efforts to significantly improve the Federal procurement system have been largely unsuccessful. Large procuring agencies such as the Department of Defense (DOD) have over the years steadfastly resisted fundamental changes to their procurement practices. These same agencies op-

posed the creation of OFPP on the basis that the Office's reform efforts would represent an unnecessary intrusion into their procurement activities. This opposition has continued throughout the life of OFPP. In fact, the Defense Department, as recently as February 1983, is on record as opposing the reauthorization of this Office. In a letter to Edwin Meese, Counselor to the President, Paul Thayer, Deputy Secretary of Defense, stated:

Certain aspects of this proposal [to reauthorize OFPP] just do not seem to be in line with how I believe government agencies should be organized or operated. First of all, I do not believe that the Executive Branch should propose the continuation of a legislative authorization of this function when this can be accomplished by the executive authority of the President. Second, the proposed legislation requires the Office of Federal Procurement Policy to report policy matters directly to the Government Operations Committees of Congress. I do not believe that we should support this direct reporting requirement.

This attitude is consistent with other positions taken by DOD over the last two years concerning government-wide procurement reform issues. In matters of contracting out, improving competition, and the adoption of the Federal Acquisition Regulation (FAR), DOD has done all it could to delay or impede the progress of these efforts. Apparently, DOD views procurement reform by Congress or any entity outside of DOD as an unnecessary intrusion into the Department's procurement domain.

Over the years, DOD has asserted that it is capable of reforming its procurement system on its own without outside assistance. In fact, DOD uses this rationale as their main argument in seeking an exemption from on-going government-wide reform efforts. However, the Department has little to show for its efforts and has proved incapable of reforming its own procurement activities. The most recent reform project was announced with much fanfare in early 1981. The Carlucci Initiatives, named after the then Deputy Secretary of Defense Frank Carlucci, was billed as the most significant procurement reform effort ever begun by the Department. The Department asserted that these initiatives would save the government billions of dollars and improve the quality and timeliness of its acquisitions. However, the GAO has reported that little progress is being made on many of these initiatives and that the cost savings projected by DOD in areas such as multi-year procurements are not materializing.

In a recent report, the Council on Economic Priorities<sup>1</sup> provided an assessment of the Pentagon's reform efforts including the Carlucci Initiatives. The Council stated:

The Carlucci initiatives fail to correct the most persistent causes of cost growth: lack of competition in contract awards; contracting practices that reward cost maximization; simultaneous design and manufacture, or "concurrency"; disorganized program management and decision-

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<sup>1</sup>Gordon Adams, "Controlling Weapons Costs: Can the Pentagon Reform Its Work?", Council on Economic Priorities, dated 1983.

making; weak supervision and auditing of weapons contracts; and the establishment of extravagant weapons performance goals, otherwise known as "gold plating."

Furthermore, the initiatives may accelerate rather than reduce future cost growth.

Even though DOD's procurement reform efforts are faltering, the Department continues to delay, whenever possible, government-wide reform efforts. In 1978, OFPP initiated a project to consolidate the regulations of DOD, GSA, and NASA into one regulation, called the Federal Acquisition Regulation (FAR). According to OFPP, the consolidation will reduce the volume of existing regulations by 62 percent and eliminate one-half of the current 64,000 pages of regulations. Despite these benefits, DOD, with the occasional assistance of GSA, has managed to delay the implementation of the FAR for almost six years.

OFPP Administrator Donald E. Sowle is optimistic about the prospects for implementation of the FAR by the end of the calendar year. However, the projected date for the issuance of the FAR has already slipped to April 1984. Since OFPP does not presently have the authority to issue the new consolidated regulation nor to require DOD, GSA, or NASA to adopt the FAR, the Committee finds it difficult to share the Administrator's optimism.

In testimony before the Legislation and National Security Subcommittee, Deputy Director Joe Wright of OMB expressed similar optimism about OFPP's ability to implement major procurement reforms. Wright stated:

Mr. Chairman, we did not seek regulatory authority because we believe we can function effectively without it . . . we also feel that this could cause unnecessary tension between OFPP and some of the other regulatory agencies, particularly DOD, GSA, and NASA.

Considering the long-standing opposition by Federal agencies to OFPP's efforts, the Committee finds Mr. Wright's position to be unacceptable. OFPP cannot fulfill its statutory responsibilities to provide leadership and direction over Federal procurement practices without the authority to deal directly with recalcitrant agencies.

The Committee does not intend that OFPP use its regulatory authority to involve itself in the day-to-day activities of the procuring agencies. However, it is clear that OFPP needs this authority to settle disputes among agencies and to act as the final decision-maker in all policy and regulatory matters involving procurement.

Despite Mr. Wright's statement, OMB was forced to use the regulatory authorities of the Office of Information and Regulatory Affairs (OIRA), under the Paperwork Reduction Act, to ensure the issuance of the FAR. The Committee believes that this is a clear demonstration of the need for the reinstatement of OFPP's regulatory authority. The Committee also seriously questions OMB's judgment in rejecting regulatory authority for OFPP while at the same time resorting to the cumbersome maneuver of using OIRA's authorities to accomplish procurement reform. Further, this unnecessary tactic will divert scarce staff resources from OIRA into matters not directly related to OIRA's charter.

In sharp contrast to Mr. Wright's testimony, the General Accounting Office, the Computer and Communications Industry Association, the U.S. Chamber of Commerce, the National Council of Technical Service Industries, the Professional Services Council, and the American Bar Association strongly supported the need for regulatory authority for OFPP.

During the hearings, Jack Biddle, President of the Computer and Communications Industry Association (CCIA) testified that:

Indeed without this power [regulatory authority], one of OFPP's most promising projects [FAR] is doomed to failure.

Further, the American Bar Association witness, Robert Wallick, stated:

The regulation [FAR], in our view, would be a significant step forward. Its full potential would be realized only if OFPP has the authority to issue, monitor, and improve the FAR as a single, controlling procurement regulation.

Clearly, OMB's arguments against giving OFPP regulatory authority are not persuasive. In fact, the positions taken by OMB raises serious questions concerning its commitment to government-wide procurement reform. The Committee believes that it is essential that OFPP's regulatory authority must be restored in order to continue the campaign for procurement reform initiated more than twelve years ago by the Commission on Government Procurement.

While Congress is considering OFPP's legislative proposal for the Uniform Procurement System (UPS), considerable work needs to be done to (1) arrest the growing volume and complexity of agency procurement regulations, and (2) improve the economies and efficiencies in the procurement process. The following are some of the problem areas in which the Committee believes OFPP can make a major impact provided that its regulatory authority is restored.

#### MAJOR PROCUREMENT REFORM INITIATIVES

##### GOVERNMENTWIDE POLICY ON CONTRACTING-OUT

The Committee has over the years been critical of the inconsistent and haphazard manner in which Federal agencies have implemented the government's policy on contracting-out for its goods and services. That policy is now contained in the Office of Management and Budget (OMB) Circular A-76 and is based on three principles:

A. *Rely on the private sector.*—The government's business is not to be in business. Where private sources are available, they should be looked to first to provide the commercial or industrial goods and services needed by the government to act on the public's behalf.

B. *Retain certain governmental functions in-house.*—Certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees.

C. *Aim for economy: Cost comparisons.*—When private performance is feasible and no overriding factors require in-house performance, the American people deserve and expect the most economical

performance, and, therefore, rigorous comparison of contract costs versus in-house costs should be used, when appropriate, to decide how the work will be done.

These are wise principles, and in their applicability to all agencies they are entirely consistent with the goal that the Federal procurement system be standardized. Notwithstanding, several agencies have received partial or full exemptions to this policy through their authorizing statutes. Further, even in those agencies where A-76 is applicable, officials have found innovative ways to circumvent the requirements of the directive. Clearly, more work needs to be done by OFPP to develop clear and concise guidelines to implement the principles governing A-76.

Burt Concklin, representing the Professional Services Council, testified:

The Professional Services Council is not suggesting a policy of blind reliance on the private sector. We are sensitive to and share the congressional and public concern regarding a lack of clarity with respect to which activities are appropriately government functions representing a core capability. A fundamental need in defusing the controversy is to formulate guidelines and criteria to determine what represents adequate core capability. This is especially important as we move into a complex, high technology services based economy where the lines between what should be done by the government and by the private sector are inevitably becoming more difficult to draw.

The Committee agrees that more effort should be expended by OFPP on clarifying which functions are inherently governmental and not subject to contracting-out. Until this is done, the confusion and uncertainty that exists both within and outside the government will continue. Ultimately, Congress may have to decide this issue by setting a national policy on contracting-out. If so, OFPP should be in a position to provide objective and rational advice on how to best formulate such a legislative proposal.

#### IMPROVING COMPETITION IN FEDERAL PROCUREMENTS

The Committee has long held the belief that any effort to reform government procurement practices must include a firm commitment to increase the use of competition in the Federal marketplace. Competition not only provides substantially reduced costs but also ensures that new and innovative products are made available to the government on a timely basis.

During the hearings on H.R. 2293, several witnesses recommended that Federal agencies place more emphasis on the use of full and open competition in their procurements. GAO testified that:

Our most recent reviews have shown that competitive opportunities are still being lost. A significant number of DOD and civil agency contracts were unnecessarily awarded on a sole-source basis because of ineffective procurement planning, failure to do sufficient market research, and a general lack of commitment to competition on the part of key agency personnel.

One example will serve to illustrate the kinds of things that I have in mind. A recent Department of Army procurement of 23,000 5-ton trucks was competed in response to congressional concerns. The procurement resulted in savings which we estimated to be at least \$141 million on a \$577 million contract.

This is just one of many projects which GAO has reviewed in which significant cost savings could be achieved if full and open competition were used. In fact, GAO indicated that the government's procurement costs could be reduced by 25 percent if agencies achieved competition.

Jack Biddle of CCIA testified that:

The experience of our own industry confirms GAO's studies. It is not uncommon for agencies to receive discounts in excess of fifty percent when they conduct competitive acquisitions for computer equipment.

Finally, Administrator Sowle testified during the hearing that a large portion of the \$2 to \$9 billion that could be saved annually through government-wide procurement reform would come from increased competition in agency procurements. Sowle also indicated that these figures could be higher since in 1982 more than \$50 billion in procurements were awarded non-competitively.<sup>2</sup>

Despite the benefits that can be achieved, Federal agencies have successfully resisted using competition in the majority of their procurements. For example, current statistics show that the majority of the Department of Defense acquisitions are made on a non-competitive basis. While DOD officials invariably claim that limiting competition is justified on the basis of national security, the Committee has found that the deciding factor is one or more of the following:

Reluctance to invest in competition to ensure that competing sources of supply are maintained.

Unavailability of personnel with skill and expertise required to conduct a competitive procurement.

Dependence (psychological or actual) on the incumbent contractor's product or service.

Unwillingness to change current operating practices.

Rewarding performance based on factors other than reducing cost.

Exaggerating the value of short-term expediencies at the sacrifice of overall cost and performance.

Institutional bias toward "in-house" solutions which severely limit full involvement of industry.

Unwillingness to commit sufficient time and resources to advanced planning.

Inability to clearly and concisely define mission requirements or needs to the industry.

Rather than address these problems, DOD has over the years attempted to expand the definition of competition to include procurements which severely restrict competition. For example, some com-

<sup>2</sup> This does not include non-competitive follow-on contracts.

ponents in DOD assert that sufficient competition is achieved as long as two vendors are involved in a procurement. However, as long as the number of qualified vendors is restricted, true competition is not achieved. In the case of Phase IV, a \$5 billion computer procurement by the Air Force, the two "competing" contractors were both incumbents. GAO reported that up to 11 qualified vendors were excluded by restrictive Air Force specifications. Notwithstanding, the Air Force maintained that this was a fully competitive procurement.

These same components also assert that non-competitive "follow-on" contracts to an incumbent vendor are not sole-source procurements. This means that once a vendor lands a contract, ostensibly under some form of price or technical competition, the agency may continue to sole-source its acquisitions indefinitely into the future. If this proposal is widely accepted, it would eliminate any chance of DOD ever achieving an acceptable level of competition in its procurements. The end result would be that DOD's ability to acquire innovative, cost-effective products would be drastically reduced. This is particularly true in the rapidly changing high technology area when the incumbent product line may be technically generations behind other companies' latest offerings in the industry.

The Committee voiced its concerns about the lack of competition within the Defense Department during hearings on the 1982 DOD Authorization bill. Administration witnesses testified in favor of strict enforcement of the government's policy promoting full and open competition. Unfortunately, little has been accomplished in this area and the number of sole-source or non-competitive procurements remains at an unacceptably high level.

H.R. 2293 adds a new section on Federal Agency Responsibilities which requires each agency to designate a senior procurement executive to oversee the agency's procurement system. Under the bill, the procurement executive will serve as an advocate for competition within the agency and will provide the necessary management direction in this important area. The Committee hopes that this and the other requirements of this section will help reduce the number of non-competitive procurements conducted by government agencies.

#### MAJOR SYSTEMS ACQUISITION POLICY

The Office of Management and Budget, through the Office of Federal Procurement Policy, issued Circular A-109 on April 5, 1976. The purpose of A-109 is to establish procedures to be followed by executive branch agencies in the acquisition of major systems. Key provisions of the circular are that Federal agencies are to:

- (1) Express needs and program objectives in mission terms and not equipment terms to encourage innovation and competition in developing alternative system design concepts,
- (2) Ensure that each major system fulfills the mission needs,
- (3) Accomplish system acquisition planning, built on analysis of agency missions resulting from clear articulation of mission needs, and

(4) Establish a program manager at the start of each major system acquisition to provide continuity and accountability for the program.

The Committee has long supported the A-109 concept as a commonsense approach to large-scale system acquisitions. The above provisions are based on managerially sound principles that can and should be applied to all such acquisitions whether they be in the Department of Defense, or the Department of Health and Human Services.

A-109 requires agencies to define and analyze their mission, and to institute long-range planning prior to initiating a major procurement action. The mission analysis is based on identifying capabilities, priorities, and resources and permits identifying system needs as early as possible. After this mission-oriented planning is completed, emphasis is placed on high visibility, strong program management, and reliance on the private sector for competitive system designs.

The implications of A-109 go far beyond the acquisition of individual systems. They extend to the agency's ability to manage its mission performance and respond to a changing environment. This is especially critical in national defense matters. Further, A-109 operates primarily on a competitive acquisition strategy tailored to the particular system acquisition.

It is important to the success of A-109 policy guidelines that a sufficient investment of time and money be made in both early agency mission planning and creative industry design efforts.

Notwithstanding, few major systems acquisitions carried out by Federal agencies are being conducted in accordance with the A-109 policy. In part, this decline in the number of A-109 acquisitions is due to an apparent decision by OFPP to devote less staff resources to overseeing the implementation of this policy. The major cause, however, is that agencies have failed to develop the expertise necessary to adopt the policy to their major acquisitions. Further, many agencies are uncomfortable with the requirements of the policy; that is, high visibility, strong program management, and reliance on the private sector for competitive systems designs.

Nonetheless, the Committee believes that significant benefits could be achieved if Federal agencies—especially the Defense Department—were required to follow this policy. OFPP should renew its efforts to oversee the Federal agencies' implementation of the A-109 policy and to counter efforts by Federal agencies to circumvent the requirements of A-109.

#### OTHER PROVISIONS OF H.R. 2293

The bill requires the Administrator to develop and submit within one year a plan for testing innovative procurement methods and procedures in selected executive agencies. It also contains a description of the kind of supporting material which shall be included in any such plan. While the plan is to be delivered within one year, OFPP is not prevented from submitting more than one plan or, in fact, submitting plans after the end of the one-year period. Any proposed plan could not be implemented unless changes in regulations and statutes, if needed, were made first. The purpose of this

provision is to encourage the Office to present to Congress new innovative procurement ideas.

Another provision raises the ceiling for the use of small purchase procedures for civilian agency contracts from \$10,000 to \$25,000. The ceiling applicable to defense contracts was raised to \$25,000 by the Department of Defense Authorization Act of 1982. The purpose of the change is to establish a uniform small purchase ceiling across the government and will result in savings because of shortened procurement cycles and reduced paperwork.

#### CONCLUSION

H.R. 2293 is an affirmation of the Committee's belief in OFPP's potential as a means of promoting economy and efficiency in the government's procurement process. Over the nine years of its existence, OFPP has been the single focal point in the government-wide procurement reform effort initiated by the Commission on Government Procurement. The bill authorizes the Office for an additional three-year period to continue to carry out its important activities while Congress considers OFPP's legislative proposal for a new Uniform Procurement System.

The bill also accomplishes two other major objectives. First, it restores the regulatory powers and authorities to OFPP so that it may immediately implement, where feasible, essential government-wide procurement reforms. Second, it requires the head of each agency to designate a senior procurement executive to act as the focal point to carry out procurement reforms within the agency.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title: References*

Section 1 titles the Act the "Office of Federal Procurement Policy Act Amendments of 1983" and defines the term "the Act" as the Office of Federal Procurement Policy Act (Public Law 93-400).

##### *Section 2. Declaration of policy*

Section 2 amends and revises the Act's policy statement to reflect the recommendations made by the Office of Federal Procurement Policy and the General Accounting Office. These provisions (1) strengthen the government's policy on relying on competitive procurement practices in the acquisition of property and services, and (2) promote procurement efficiency, effectiveness, and economy within the government and for those who do business with the government.

##### *Section 3. Authority and functions*

Subsections 3(a), (b), and (c) amend subsections 6(a), (d), and (e), respectively, of the Act to restore the Administrator's authority and functions to provide overall direction of procurement policy, including prescribing, to the extent practical, procurement policies, regulations, and procedures to be followed by executive agencies. Further, all references to the Uniform Procurement System are deleted to conform with the changes made in Section 4.

Subsection 3(d) amends subsections 6(h) and (i) of the Act with a new subsection 6(h) which permits the Administrator, with the concurrence of the OMB Director, to deny or rescind the promulgation of any final rule or regulation of any executive agency if the Administrator determines that such rule or regulation is inconsistent with the policies set forth in Section 2 or is inconsistent with any policies, regulations, or procedures issued pursuant to this section.

*Section 4. Responsiveness to Congress*

Subsection 4(a)(1) eliminates those provisions in subsection 8(a) of the Act relating to the requirement for the development of the Uniform Procurement System (UPS) and the legislative proposal to implement that system, since that requirement has been completed by OFPP.

Subsection 4(a)(2-5) makes several changes to subsections 8(b) and (c) to conform to OFPP's revised authority.

*Section 5. Federal agency responsibilities*

Section 5 adds a new Section 8A on Federal Agency Responsibilities to the Act.

New subsection 8A(a) requires the head of each Federal agency to designate a senior procurement executive and give that individual responsibility for overseeing the agency's procurement system, including unique agency policies and regulations. The senior procurement executive will also serve as the advocate for competition in procurement within the agency and will provide the necessary management direction in this important area. Besides overseeing agency procurement activities, the senior executive will develop and maintain a procurement management career program to ensure an adequate professional workforce.

This subsection also requires the agency head to promote the use of full and open competition in agency procurements and establish clear lines of authority, accountability, and responsibility for procurement decision-making. The agency head must ensure that the policies contained in Section 2 of the Act are included in agency procurement regulations.

New subsections 8A(b) and (c) set specific criteria for agency heads to follow to promote the increased use of full and open competition. This subsection also requires the agency head to assign to the Senior Procurement Executive the responsibility for removing barriers to full and open competition and reporting the results of these actions to the agency head annually.

New subsection 8A(d) requires agency heads to establish and maintain for a period of five years a record of all procurement transactions of \$25,000 or more. Such records shall be kept on a fiscal basis and shall include a complete description of the procurement transactions. In those cases where non-competitive procedures were used or where only one bid or proposal was received, additional information must be provided to show (1) the reason for the lack of competition, and (2) the official or officials who required and approved the use of noncompetitive procedures. This subsection also requires that the records established by the agency head be transmitted to the Federal Procurement Data Center. These transmittals should be made no less than once each quarter.

New subsection 8A(e) requires the heads of each agency to transmit an annual report to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives. Each annual report shall include (1) a summary of the activities and accomplishments of the Senior Procurement Executive during the preceding fiscal year, and (2) a detailed description of all actions that the head of the executive agency intends to take during the upcoming fiscal year to increase the number of competitive procurements within that agency.

*Section 6. Effect on existing regulations*

Section 6 amends Section 10 of the Act to conform to OFPP's revised authority.

*Section 7. Authorization of appropriations*

Section 7 amends Section 11 of the Act to authorize continued funding of \$4 million for each fiscal year through September 30, 1986.

*Section 8. Delegation*

Section 8 amends Section 12 of the Act to conform to OFPP's revised authority.

*Section 9. Plan to test new procurement methods and procedures*

Section 9 requires the Administrator to develop and submit to the Congress within one year a plan for testing innovative procurement methods and procedures in selected agencies. The Administrator is not constrained to submitting one plan if he sees a need for more tests. Furthermore, additional plans may be submitted beyond the additional year.

*Section 10. Procurement procedures simplification, conforming amendments*

Section 10 raises the ceiling for the use of small purchase procedures for civil agency contracts from \$10,000 to \$25,000. The ceiling applicable to defense contracts was previously raised to \$25,000 by the Department of Defense Authorization Act of 1982. This section would subsequently establish a uniform small purchase ceiling across the government and result in savings because of shortened procurement cycles and reduced paperwork. It also makes uniform the requirement for the Secretary of Commerce to publish a notice of all procurement actions above \$10,000. The ceiling is presently \$10,000 for the Defense Department and \$5,000 for civilian agencies.

*Section 11. Effective date*

Section 11 specifies that the provisions of the bill shall take effect on October 1, 1983.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The cost estimate prepared by the Congressional Budget Office under Sections 308(a) and 403 of the Congressional Budget Act of 1974 is contained in the following letter from its Director:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., May 10, 1983.*

Hon. JACK BROOKS,

*Chairman, Committee on Government Operations, House of Representatives, Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2293, the Office of Federal Procurement Policy Act Amendments of 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2293.
2. Bill title: Office of Federal Procurement Policy Act Amendments of 1983.
3. Bill status: As ordered reported by the House Committee on Government Operations, May 3, 1983.
4. Bill purpose: This bill changes certain procurement procedures and record-keeping requirements for Federal agencies and authorizes the appropriation of \$4 million, each year, in fiscal years 1984 through 1986 for activities authorized by this bill. Currently, \$2.4 million has been appropriated to the Office of Federal Procurement Policy for fiscal year 1983. A supplemental request for \$95,000 is pending before the Congress. The President has requested \$2.7 million for fiscal year 1984.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1984	1985	1986	1987	1988
Authorization level.....	4.0	4.0	4.0	.....	.....
Estimated outlays.....	3.0	4.0	4.0	1.0	.....

The costs of this bill fall within budget function 800.

Basis of estimate: This estimate assumes that the amount authorized will be appropriated. The estimate of outlays is based on historical spending patterns.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Judith Walker.
10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

COMMITTEE ESTIMATE OF COST

The Committee agrees with the estimate contained in the submission of the Congressional Budget Office above and presents that

estimate as the Committee's pursuant to the requirements of clause 7 of House Rule XIII.

#### INFLATIONARY IMPACT

In compliance with clause 2(1)(4) of House Rule XI, it is the opinion of the Committee that the provisions of this bill will have no inflationary impact on prices and costs in the operations of the national economy.

#### OVERSIGHT FINDINGS

The Committee has maintained continuous oversight of the agencies affected by this legislation, but has made no detailed findings and recommendations other than those contained in this report.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

No new budget authority or tax expenditures are required by this legislation.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### OFFICE OF FEDERAL PROCUREMENT POLICY ACT

##### AN ACT TO ESTABLISH AN OFFICE OF FEDERAL PROCUREMENT POLICY WITHIN THE OFFICE OF MANAGEMENT AND BUDGET, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Office of Federal Procurement Policy Act".*

#### 【 DECLARATION OF POLICY

【 SEC. 2. It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

【 (1) promoting the use of full and open competition in the procurement of products and services;

【 (2) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requisite quality and within the time needed at the lowest reasonable cost;

【 (3) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel, and eliminating fraud and waste in the procurement process;

【 (4) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;

【 (5) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;

- [(6) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;
- [(7) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;
- [(8) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operation;
- [(9) coordinating procurement policies and programs of the several departments and agencies;
- [(10) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;
- [(11) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government; and
- [(12) promoting fair dealing and equitable relationships among the parties in Government contracting.]

*DECLARATION OF POLICY*

*SEC. 2. It is the policy of the Congress that the Federal Government shall rely on competitive procurement practices to supply needed property and services, and that the system for procurement of property and services by the Federal Government shall—*

- (1) promote full and open competition;
- (2) establish policies, procedures, and practices which will provide the Government property and services of the requisite quality, within the time needed, at the lowest reasonable cost;
- (3) promote the development of simplified uniform procurement processes;
- (4) promote the participation of small business concerns;
- (5) support the continuing development of a professionally competent work force;
- (6) eliminate fraud and waste in the procurement process;
- (7) eliminate duplication of procurement activities and redundant requirements placed on contractor and Federal procurement officials;
- (8) promote fair dealings and equitable relationships with the private sector;
- (9) ensure payment is made in a timely manner and only for value received;
- (10) require the description of needs, whenever feasible, in terms of functions to be performed or performance required;
- (11) require, to the extent practicable, the use of commercial products to meet the Government's needs;
- (12) ensure the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements;
- (13) require that personal services are obtained in accordance with applicable personnel procedures and not by contract; and
- (14) otherwise promote procurement efficiency, effectiveness, and economy within the Government and for those who do business with the Government.

\* \* \* \* \*

AUTHORITY AND FUNCTIONS

<sup>9</sup>SEC. 6. (a) The Administrator shall provide overall leadership in the development and implementation of procurement policies and the coordination of programs to improve the quality and performance of procurement personnel. The Administrator shall develop for submission under section 8(a) a uniform procurement system which shall, to the extent he considers appropriate and with due regard to the program activities of the executive agencies, include uniform policies, regulations, procedures, and forms to be followed by executive agencies—】

*Sec. 6. (a) The Administrator shall provide overall direction of procurement policy. To the extent the Administrator considers appropriate and, with due regard to the program activities of the executive agencies, the Administrator shall prescribe policies, regulations, procedures, and forms which shall be in accordance with applicable laws and shall be followed by executive agencies—*

(1) in the procurement of—

- (A) property other than real property in being;
- (B) services, including research and development; and
- (C) construction, alteration, repair or maintenance of real property; and

(2) in providing for procurement by recipients of Federal grants or assistance of items specified in clause (1)(A), (1)(B), and (1)(C) of this subsection, to the extent required for performance of Federal grant or assistance programs.

\* \* \* \* \*

(d) The functions of the Administrator shall include—

(1) reviewing the recommendations of the Commission on Government Procurement to determine those recommendations that should be completed, amended, or rejected, and to propose the priority and schedules for completing the remaining recommendations:

(2) 【developing】 establishing a system of simplified and uniform procurement policies, regulations, procedures, and forms;

(3) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(4) promoting and conducting research in procurement policies, regulations, procedures, and forms, through the Federal Acquisition Institute, which shall be located within the Office and directed by the Administrator;

(5) establish, through the Federal Procurement Data Center, which shall be located in the General Services Administration and acting as executive agent for the Administrator, a computer-based information system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector;

(6) recommending and promoting, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training,

career development, and performance evaluation of procurement personnel;

(7) developing, [for inclusion in the uniform procurement system to be submitted under section 8(a),] standard contracts and contract language in order to reduce the Government's cost of procuring goods and services as well as the private sector's cost of doing business with the Government; and

(8) providing leadership and coordination in the formulation of executive branch positions on legislation relating to procurement.

(e) In the development and implementation of [the uniform procurement system] policies, regulations, procedures, and forms, the Administrator shall consult with the executive agencies affected, including the Small Business Administration and other executive agencies promulgating policies, regulations, procedures and forms affecting procurement. To the extent feasible, the Administrator may designate an executive agency or agencies, establish inter-agency committees, or otherwise use agency representatives or personnel to solicit the views and the agreement, so far as possible, of executive agencies affected on significant changes in policies, regulations, procedures and forms.

\* \* \* \* \*

[(h)(1) Until the effective date of legislation implementing a uniform procurement system, the Administrator may, with the concurrence of the Director of the Office of Management and Budget, issue policy directives, in accordance with existing law, for the purpose of promoting the development and implementation of the uniform procurement system or for the purpose of promoting the policies set forth in paragraphs (1) through (8) of section 2 of this Act. Such policy directives shall be followed by executive agencies.

[(2) Any policy directives issued pursuant to paragraph (1) may require executive agencies to issue implementing regulations which shall be in accord with the criteria and standards set forth in such policy directives.

[(i) Until the effective date of legislation implementing a uniform procurement system, the Director of the Office of Management and Budget shall deny or rescind the promulgation of any final rule or regulation of any executive agency relating to procurement if the Director determines that such rule or regulation is inconsistent with the policies set forth in paragraphs (1) through (8) of section 2 of this Act or is inconsistent with any policy directives issued pursuant to subsection (h).]

*(h) The Administrator may, with the concurrence of the Director of the Office of Management and Budget, deny or rescind the promulgation of any final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with policies set forth in paragraphs (1) through (14) of section 2 of this Act or is inconsistent with any policies, regulations, or procedures issued pursuant to subsection (a) of this section.*

[(j)] (i) Nothing in this Act shall be construed—

(1) to impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services

Act of 1949 with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

(2) to limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

\* \* \* \* \*

RESPONSIVENESS TO CONGRESS

SEC. 8. (a) **[(1)]** The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

**[(2)]** At the earliest practicable date, but in no event later than one year after the date of enactment of the Office Federal Procurement Policy Act Amendments of 1979, the Administrator shall transmit to the House of Representatives and the Senate his proposal for a uniform procurement system. Such proposal shall include a full description of the proposed system, projected costs and benefits of the system as proposed, and short- and long-term plans for implementation of the system, including schedules for implementation. At the same time, the Administrator shall transmit a report on the recommendations of the Commission on Government Procurement specified in section 6(d)(1) of this Act.

**[(3)]** At the earliest practicable date, but in no event later than one year after presentation of the proposal described in paragraph (2) of this subsection, the Administrator shall propose to the House of Representatives and the Senate recommended changes in legislation relating to procurement by executive agencies. If the Administrator deems it necessary, these recommendations shall include a proposal for a consolidated statutory base for procurement by executive agencies.

**[(4)]** At the earliest practicable date, but in no event later than the submission of the legislative recommendations described in paragraph (3) of this subsection, the Administrator shall present a proposal for a management system described in section 6(c) to implement and enforce the uniform procurement system.]

(b) At least 30 days prior to the effective date of **[any policy prescribed under section 6]** *any policy or regulation prescribed under section 6(a)*, the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy *or regulation*. Such report shall include—

- (1) a full description of the policy *or regulation*;
- (2) a summary of the reasons for the issuance of such policy *or regulation*; and
- (3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy *or regulation*.

(c) In the case of an emergency, the President may waive the notice requirement of subsection (b) by submitting in writing to the

Congress his reasons therefor at the earliest practicable date on or before the effective date of any policy or regulation.

**FEDERAL AGENCY RESPONSIBILITIES**

**SEC. 8A. (a) To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall—**

(1) increase the use of full and open competition in agency procurements in accordance with subsection (b);

(2) ensure that agency procurements are carried out in accordance with all laws, Government-wide policies and regulations, and good business practices;

(3) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking, including placing the procurement function at a sufficiently high level in the agency to provide—

(A) direct access to the head of the major organizational element served; and

(B) comparative equality with organizational counterparts;

(4) designate a senior procurement executive who shall be responsible for management direction of the procurement system, including unique agency policies and regulations and agency system standards, and who shall serve as the advocate for competition in accordance with subsection (c);

(5) develop and maintain a procurement management career program to ensure an adequate professional work force;

(6) establish and maintain procurement records in accordance with subsection (d); and

(7) prepare and submit annual report in accordance with subsection (e).

(b) Efforts to increase the use of full and open competition pursuant to subsection (a)(1) shall include—

(1) assigning to the senior procurement executive designated pursuant to subsection (a)(4) responsibility for removing barriers to full and open competition and for reporting to the agency head annually on new initiatives required to increase competition and on barriers to full and open competition which such executive was unable to remove;

(2) setting goals and developing plans for increasing competition on a fiscal year basis;

(3) using advance procurement planning, market research, business strategies, and testing of the marketplace for alternative products and services;

(4) describing needs whenever possible in terms of functions to be performed or performance required;

(5) precluding from Government solicitations qualification requirements, designs, processes, or other conditions which restrict competition and which do not serve legitimate purposes;

(6) establishing more than one production source for new products, whenever feasible;

(7) excluding the use of patents or proprietary rights as the grounds for using noncompetitive procedures when competitive alternatives exist;

(8) limiting those circumstances for which noncompetitive procurement is permitted and requiring written approval at a level above the contracting officer for such procurements;

(9) publicizing notices of proposed procurement actions well in advance of the time for receipt of bids or proposals and specifically inviting competition unless noncompetitive procurement has been justified and approved;

(10) designing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

(11) emphasizing competition in programs for procurement training and research.

(c) The senior procurement executive designated as the advocate for competition under subsection (a)(4) shall be responsible for promoting full and open competition in the procurement of property and services and shall—

(1) review the purchasing and contracting activities of the executive agency;

(2) identify and report to the head of the executive agency—

(A) opportunities to achieve full and open competition on the basis of price and other significant factors in the purchases and contracts of the executive agency;

(B) solicitations and proposed solicitations which include unnecessarily detailed specifications or unnecessarily restrictive statements of need which may reduce competition in the procurement activities of the executive agency; and

(C) any other condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency; and

(3) prepare and transmit to the head of the executive agency an annual report describing such executive's activities under this section.

(d)(1) Each head of an executive agency shall establish and maintain for a period of five years a record, by fiscal year, of all procurements other than small purchases (of less than an aggregate of \$25,000) in such fiscal year. Such record shall include—

(A) information identifying the source to whom the contract was awarded;

(B) the property or services obtained by the Government under the procurement; and

(C) the total cost of the procurement.

(2) With respect to any procurement in which noncompetitive procedures were used or in which only one bid or proposal was received after competitive procedures were used, the procurement record shall include, in addition to the information required by paragraph (1)—

(A) the reason for the use of noncompetitive procedures; and

(B) the position of the officers or employees of the agency who required and approved the use of noncompetitive procedures in such procurement.

(3) The information included in the record established and maintained under this subsection shall be transmitted to the Federal Procurement Data Center referred to in section 6(d)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(5)).

(e)(1) Not later than October 31 of each of 1984, 1985, and 1986, each head of an executive agency shall transmit to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives an annual report including the information specified in paragraph (2).

(2) Each annual report transmitted under paragraph (1) shall include—

(A) a summary of the activities and accomplishments of the senior procurement executive of the executive agency during the preceding fiscal year; and

(B) a specific description of all actions that the head of the executive agency intends to take during the current fiscal year to—

(i) increase competition for contracts with the executive agency on the basis of price and other significant factors; and

(ii) reduce the number and dollar value of contracts entered into by the executive agency after soliciting bids or proposals from, or evaluating bids or proposals with discussions with, only one source.

\* \* \* \* \*

#### EFFECT ON EXISTING REGULATIONS

[SEC. 10. Procurement policies, regulations, procedures, or forms in effect as of the date of enactment of the Office of Federal Procurement Policy Act Amendments of 1979 shall continue in effect, as modified from time to time by the issuing offices on their own initiative or in response to policy directives issued under section 6(h) until repealed, amended, or superseded pursuant to the adoption of the uniform procurement system described in section 6 of this Act.]

#### EFFECT ON EXISTING REGULATIONS

SEC. 10. Procurement policies, regulations, procedures, or forms in effect as of the date of enactment of this Act shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to carry out the provisions of this Act, and for no other purpose \$4,000,000 for the fiscal year ending September 30, [1980] 1984, and for each of the [three] two succeeding fiscal years; and one-third of the funds appropriated for any such fiscal year shall be made available to the Federal Acquisition Institute for the performance of its functions under this Act. Any subsequent legislation to authorize appropri-

ations to carry out the purposes of this Act shall be referred in the Senate to the Committee on Governmental Affairs.

【DELEGATION

【SEC. 12. (a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this Act, other than his basic authority to provide overall leadership in the development of Federal procurement policy, to any other executive agency with the consent of such agency or at the direction of the President.

【(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this Act.】

DELEGATION

SEC. 12. (a) *The Administrator may delegate, and authorize successive redelegations of, any authority, function or power under this Act (other than his basic authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out that policy), to any other executive agency with the consent of such agency or at the direction of the President.*

(b) *The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this Act.*

\* \* \* \* \*

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

\* \* \* \* \*

TITLE II—PROPERTY MANAGEMENT

PROCUREMENTS, WAREHOUSING, AND RELATED ACTIVITIES

SEC. 201. (a) The Administrator shall, in respect of executive agencies, and to the extent that he determines that so doing is advantageous to the Government in terms of economy, efficiency, or service, and with due regard to the program activities of the agencies concerned—

(1) subject to 【policy directives】 regulations prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act, prescribe policies and methods of procurement and supply of personal property and nonpersonal services, including related functions such as contracting, inspection, storage, issue, property identification and classification, transportation and traffic management, management of public utility services, and repairing and converting; and

(2) operate, and, after consultation with the executive agencies affected, consolidate, take over, or arrange for the operation by any executive agency of warehouses, supply centers, repair shops, fuel yards, and other similar activities; and

(3) procure and supply personal property and nonpersonal services for the use of executive agencies in the proper discharge of their responsibilities, and perform functions related to procurement and supply such as those mentioned above in subparagraph (1) of this subsection: *Provided*, That contracts for public utility services may be made for periods not exceeding ten years; and

(4) with respect to transportation and other public utility services for the use of executive agencies, represent such agencies in negotiations with carriers and other public utilities and in proceedings involving carriers or other public utilities before Federal and State regulatory bodies;

*Provided*, That the Secretary of Defense may from time to time, and unless the President shall otherwise direct, exempt the Department of Defense from action taken or which may be taken by the Administrator under clauses (1)-(4) of this subsection whenever he determines such exemption to be in the best interests of national security.

\* \* \* \* \*

(c) In acquiring personal property, any executive agency, under regulations to be prescribed by the Administrator, subject to [policy directives] regulations prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act, may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired: *Provided*, That any transaction carried out under the authority of this subsection shall be evidenced in writing.

\* \* \* \* \*

#### SURVEYS, STANDARDIZATION AND CATALOGING

SEC. 206. (a) As he may deem necessary for the effectuation of his functions under this subchapter, and after adequate advance notice to the executive agencies affected, and with due regard to the requirements of the Department of Defense as determined by the Secretary of Defense, the Administrator is authorized (1) to make surveys of Government property and property management practices and obtain reports thereon from executive agencies; (2) to co-operate with executive agencies in the establishment of reasonable inventory levels for property stocked by them and from time to time report any excessive stocking to the Congress and to the Director of the Office of Management and Budget; (3) to establish and maintain such uniform Federal supply catalog system as may be appropriate to identify and classify personal property under the control of Federal agencies: *Provided*, That the Administrator and the Secretary of Defense shall coordinate the cataloging activities of the General Services Administration and the Department of Defense so as to avoid unnecessary duplication; and (4) subject to [policy directives] regulations promulgated by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act, to prescribe standardized forms and proce-

dures, except such as the Comptroller General is authorized by law to prescribe, and standard purchase specifications.

**TITLE III—PROCUREMENT PROCEDURE**

**DECLARATION OF PURPOSE**

**SEC. 301.** The purpose of this title is to facilitate the procurement of property and services.

**APPLICATION AND PROCUREMENT METHODS**

**SEC. 302 (a)** \* \* \*

(c) all purchases and contracts for property and services shall be made by advertising, as provided in section 303; except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed **[\$10,000]** **\$25,000;**

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the property or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical property;

(8) for property purchased for authorized resale;

(9) for perishable or nonperishable subsistence supplies;

(10) for property or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test;

(12) for property or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or as to some part of the requirements)

or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all or some of the bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder and (B) the negotiated price is the lowest negotiated price offered by any responsible supplier; or

(15) otherwise authorized by law, except that section 304 of this Act shall apply to purchases and contracts made without advertising under this paragraph.

## **TITLE VI—GENERAL PROVISIONS**

## **REPEAL AND SAVING PROVISIONS**

**SEC. 602. (a) \* \* \***

(c) The authority conferred by this Act shall be in addition and paramount to any authority conferred by any other law and shall not be subject to the provisions of any law inconsistent herewith, *except as otherwise provided by the Office of Federal Procurement Policy Act*, and except that sections 205(b) and 206(c) of this Act shall not be applicable to any Government corporation or agency which is subject to the Government Corporation Control Act.

## **SECTION 3709 OF THE REVISED STATUTES**

SEC. 3709. Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed **[\$10,000]** \$25,000, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 29 of the Surplus Property Act of 1944 (50 U.S.C. App. 1638), (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed \$100, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

ACT OF JULY 27, 1965

AN ACT MAKING APPROPRIATIONS FOR THE LEGISLATIVE BRANCH FOR THE FISCAL YEAR  
ENDING JUNE 30, 1966, AND FOR OTHER PURPOSES

\* \* \* \* \*

ARCHITECT OF THE CAPITOL

OFFICE OF THE ARCHITECT OF THE CAPITOL

SALARIES

For the Architect of the Capitol, Assistant Architect of the Capitol, and Second Assistant Architect of the Capitol and other personal services at rates of pay provided by law, \$587,600.

Appropriations under the control of the Architect of the Capitol shall be available for expenses of travel on official business not to exceed in the aggregate under all funds the sum of \$20,000.

Hereafter the purchase of supplies and equipment and the procurement of services for all branches under the Architect of the Capitol may be made in the open market without compliance with section 3709 of the Revised Statutes of the United States, as amended, in the manner common among businessmen, when the aggregate amount of the purchase or the service does not exceed [\$10,000] \$25,000 in any instance.

\* \* \* \* \*

SECTION 9 OF THE TENNESSEE VALLEY AUTHORITY ACT OF 1933

SEC. 9. (a) \* \* \*

(b) All purchases and contracts for supplies or services, except for personal services, made by the Corporation, shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Board shall determine to be adequate to insure notice and opportunity for competition: *Provided*, That advertisement shall not be required when, (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed [\$10,000] \$25,000; in which cases such purchases of supplies or procurement of services may be made in the open market in the manner common among businessmen: *Provided further*, That in comparing bids and in making awards the Board may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications.

\* \* \* \* \*

**SECTION 303 OF THE ACT OF JULY 2, 1980**

**AN ACT TO PROVIDE AUTHORIZATIONS FOR THE SMALL BUSINESS ADMINISTRATION,  
AND FOR OTHER PURPOSES**

\* \* \* \* \*

**STATE OF SMALL BUSINESS**

**SEC. 303.** (a) The President shall transmit to the Congress not later than January 20 of each year a Report on Small Business and Competition which shall—

(1) examine the current role of small business in the economy on an industry-by-industry basis;

(2) present current and historical data on production, employment, investment, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy;

(3) identify economic trends which will or may affect the small business sector and the state of competition;

(4) examine the effects on small business and competition of policies, programs, and activities, including, but not limited to the Internal Revenue Code, the Employee Retirement Income Security Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, and regulations promulgated thereunder; identify problem generated by such policies, programs, and activities; and recommend legislative and administrative solutions to such problems; and

(5) recommend a program for carrying out the policy declared in section 302 of this Act, together with such recommendations for legislation as he may deem necessary or desirable.

(b) The President also shall transmit simultaneously as an appendix to such annual report, a report by agency and department, on the total dollar value of all Federal contracts exceeding **[\$10,000]** \$25,000 in amount and the dollar amount (including the subcontracts thereunder in excess of **[\$10,000]** \$25,000 awarded to small, minority-owned and female-owned businesses.

(c) The President may transmit from time to time to the Congress reports supplementary to the Report on Small Business and Competition, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 302 of this Act.

(d) The Report on Small Business and Competition and all supplementary reports transmitted under subsections (b) and (c) of this section shall, when transmitted to Congress, be referred to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives.

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**SMALL BUSINESS ACT**

\* \* \* \* \*

**SEC. 8. (a)(1) \* \* \***

\* \* \* \* \*

(d)(1) It is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

- (A) does not exceed [\$10,000] \$25,000;
- (B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or
- (C) is for services which are personal in nature.

\* \* \* \* \*

(e) It shall be the duty of the Secretary of Commerce, and he is hereby empowered, to obtain notice of all proposed [defense] procurement actions of \$10,000 and above [, and all civilian procurement actions of \$5,000 and above,] from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication 'United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards', immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable.

\* \* \* \* \*

SEC. 15. (a) \* \* \*

\* \* \* \* \*

(j) Each contract for the procurement of goods and services which has an anticipated value of less than [\$10,000] \$25,000 and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever cir-

cumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

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